

NYC

COMMISSION TO COMBAT POLICE CORRUPTION

Nineteenth Annual Report

of the Commission

December 2019

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DEDICATION

This Annual Report is dedicated to the memory of Michael Francis Armstrong, the Chair of the Commission to Combat Police Corruption for fifteen years and a fierce foe of official corruption throughout his long and remarkable career. Given his work with the Knapp Commission and, two decades later, with the Mollen Commission, it was only fitting when in 2004 he became the Chair of this Commission, which was created based on a Mollen Commission recommendation. Mike ultimately oversaw the publication of fourteen of this Commission's Annual Reports, and he continued contributing to completion of this Report until his death on October 17, 2019.

Mike's commitment to fighting corruption was matched only by his respect and admiration for the New York City Police Department and for those officers who carry out their duties with honesty and diligence. He never lost sight of the essential service they perform for the community, and he never stopped working toward the goal of a department free of corruption, committed to an effective anti-corruption program. It is with deep gratitude that we dedicate this Annual Report to his memory and his vision.

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OVERVIEW

The Commission to Combat Police Corruption (“CCPC” or “the Commission”) was established by Mayoral Executive Order No. 18 in 1995 based upon a recommendation of the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department chaired by Judge Milton Mollen (“Mollen Commission”).¹ The Mollen Commission recommended the creation of an external, independent “Police Commission,” whose purpose would be to monitor the anti-corruption systems of the New York City Police Department (“NYPD” or “the Department”). The resulting Executive Order mandated that the Commission monitor the efforts of the Department to gather information, investigate allegations, and implement policies designed to detect, control, and deter corruption among its members.²

The Commission fulfills its mandate largely through examining a sample of investigations conducted by the Internal Affairs Bureau (IAB)³ and reviewing all of the closed disciplinary cases involving uniformed members of the service. The Commission reports its findings from these reviews in its Annual Report. This Report, *The Nineteenth Annual Report of the Commission*, covers the work performed by the Commission with respect to IAB investigations for calendar years 2017 and 2018. With respect to closed disciplinary cases, the availability of information for adjudicated matters does not follow the calendar year. Statistical analyses are included in this Annual Report for cases adjudicated through September 2018. While the Commission sets forth its analyses of penalties for those cases adjudicated between

¹ Executive Order No. 18 is attached as Appendix A to this Report.

² That Executive Order also specifically withheld authorization from the Commission to conduct its own investigations into allegations of corruption against members of the Department, except in specific, narrowly-defined circumstances. Executive Order No. 18, § 3(b) (February 27, 1995).

³ IAB is the bureau within the Department responsible for investigating allegations of corruption and serious misconduct against members of the service.

October 2016 and September 2017 in this Report, its commentary and analysis of its agreement or disagreement with the following year's penalties (imposed through September 2018) will be provided at a later date.

This Report contains three main sections and a brief summary of the Case Categories developed by the Commission, which follows this Overview. In the first main section of the Report, the Commission describes its monitoring of investigations conducted by IAB. The second section focuses on adjudication of the formal disciplinary cases brought against uniformed members of the service. The final section follows up on the Commission's recommendations from the *Eighteenth Annual Report of the Commission*⁴ and includes more recommendations to improve IAB investigations and enhance the consistency, fairness, and deterrent effect of the administrative disciplinary process.

The first section of the Report begins with a discussion of the Commission's primary approaches to monitoring IAB's efforts to detect and investigate corruption. These include attending Steering Committee meetings and case reviews, and evaluating a sample of investigations IAB concluded. In the Steering Committee and case review meetings, Commission staff are present as IAB supervisors discuss the progress of their cases with high-ranking members of IAB, and receive input as to next steps.

This reporting period, the Commission's evaluation of closed IAB cases involved a sample of 133 investigations. After describing the overall areas on which it focuses during its review of individual cases, the Commission provides the results of various analyses stemming from its review of these 133 investigations. In these analyses, the Commission identifies the various initial sources of the complaints. The Commission also examines the overall length of the

⁴ *Eighteenth Annual Report of the Commission* ("Eighteenth Annual Report") (August 2017).

investigations and compares this time to the overall length of investigations reviewed between 2014 and 2016. The Commission also sets forth the number of cases in its review that had substantiated allegations and provides a list of the allegations that were substantiated.

The first section concludes with the Commission's assessment of IAB's performance across the 133 investigations reviewed. This assessment utilized seven specific criteria that measured whether: 1) IAB's dispositions of all the allegations were supported by the evidence; 2) IAB interviewed all available witnesses; 3) investigators accurately summarized, in their worksheets, the interviews of civilian witnesses, law enforcement witnesses, and subject officers; 4) interviews were adequate; 5) investigators documented all investigative steps taken; 6) video evidence was sought in a timely manner; and 7) supervisors reviewed the case and provided guidance in a consistent and meaningful manner.

After discussing the Commission's review of IAB's investigations, the second main section of this Report turns to a discussion regarding the 930 disciplinary cases (involving 854 separate adjudications and a total of 2707 individual allegations) that were prosecuted by either the Department Advocate's Office (DAO) or the Administrative Prosecution Unit (APU) of the Civilian Complaint Review Board (CCRB), and adjudicated by the Department during the reporting period.⁵ Among other breakdowns, this section identifies the number of disciplinary cases for each rank, the discipline imposed, and the average length of time the Department took to adjudicate the cases. The Commission then provides further detail regarding three specific dispositions that are sometimes used to resolve charges brought against members of the service: 1) charges were filed because the subject officer had left the Department prior to the adjudication

⁵ See *infra* at p. 37 for descriptions of DAO, APU, and CCRB.

of the case;⁶ 2) the subject officer was separated from the Department, either through retirement as a product of a negotiation or termination after a hearing; and 3) the subject officer was placed on dismissal probation to monitor his performance.⁷ Brief descriptions are provided of the cases that were resolved with the termination of the subject officer, either by operation of law or after adjudication of a disciplinary case. This section also includes a breakdown by case type of those charges that resulted in the subject officer's placement on dismissal probation.

The majority of the second section sets forth the Commission's evaluation of the penalties imposed within various categories of cases that were adjudicated between October 2016 and September 2017. Although the Commission agreed with the outcomes in 89% of those disciplinary cases, it disagreed with the penalties imposed in one or more cases falling into ten categories. For those ten categories, the Commission includes case examples to explain and/or illustrate the Commission's reasoning. Where the Commission believes the penalties imposed were insufficient, the Commission describes the factors it believes warranted increasing the penalties.

The final section of this Report revisits many of the recommendations the Commission set forth in its *Eighteenth Annual Report*⁸ and assesses whether the Department has implemented those recommendations. The Commission also sets forth more recommendations based on its analyses of the investigations and disciplinary cases reviewed for this Report.

⁶ "Charges Filed" refers to cases where the subject officer ceased to be employed by the Department for any reason prior to the adjudication of the charges. In these instances, the charges are filed in the subject officer's personnel folder for the purpose of tolling the statute of limitations. (*See infra* at p. 17 for a discussion of the statute of limitations in administrative cases.) In the event the subject officer is reinstated, the Department can then pursue the prosecution of the charges.

⁷ *See infra* at p. 63 for a definition of dismissal probation.

⁸ *Eighteenth Annual Report* at pp. 167-174.

The Commission also discusses in that section some of its prior recommendations that were adopted by an Independent Panel (the “Panel”) that was convened by Police Commissioner James P. O’Neill. This Panel was appointed in June 2018 and was comprised of former United States Attorney for the Southern District of New York Mary Jo White, former United States Attorney for the Eastern District of New York Robert Capers, and former United States District Judge for the Southern District of New York Barbara Jones. The Panel was charged with performing an autonomous, exhaustive review of the NYPD’s disciplinary system and developing recommendations to improve it. The Commission met with the Panel shortly after it was convened to provide it with the Commission’s perspective and background information, such as its prior reports. The Panel submitted its report on January 25, 2019, which included reference to a number of Commission recommendations, most particularly in the areas of domestic violence and false statements.⁹

On February 1, Commissioner O’Neill accepted the Panel’s recommendations and appointed an Implementation Group comprised of NYPD executives and chaired by First Deputy Commissioner Benjamin B. Tucker. On April 1, 2019, the Department announced it was adopting the recommendations of the Commission and the Panel for discipline in domestic violence cases. The Department has also announced that it will be adopting a new false statement enforcement policy in the last quarter of 2019. In future reports, the Commission will assess the Department’s implementation of its domestic violence and false statement recommendations in particular, as well as other aspects of the work of the Implementation Group. The Commission also plans to conduct an evaluation of the issues that emerged during

⁹ *The Report of the Independent Panel on the Disciplinary System of the New York City Police Department* (January 25, 2019) at pp. 48-50 and 53-54.

the federal investigation into high-ranking members of the Department mentioned briefly in its *Eighteenth Annual Report*.¹⁰

The Panel also focused on the Department's increased reliance on Civil Rights Law §50-a to prevent disclosure of disciplinary outcomes. This law prohibits the release of information in an officer's personnel file that could be used in promotional or other employment decisions about that officer absent the officer's permission or an order from a court. In recent years, the Department has adopted an expanded view of what disclosures are prohibited by this statute, and the courts have supported this view. The Panel recognized that this broader interpretation has made the Department's disciplinary system less transparent, affecting the public's trust in whether officers were adequately being held accountable for their misconduct. To address this issue, the Panel recommended that the Department support amendments to Civil Rights Law §50-a, and guard against its unwarranted expansion. One of the important goals of this Commission's reports is to bring more transparency to the system through its discussion of the range of penalties for specific case types as well as through the description of specific cases when the Commission did not believe that the penalties were adequate.

¹⁰ *Eighteenth Annual Report* at pp. 4-5.

CASE CATEGORIES

For this Report, the Commission updated the descriptive categories for Internal Affairs and disciplinary cases and allegations. In the past two annual reports, the Commission utilized different case categories for IAB investigations and disciplinary cases, which resulted in similar allegations being categorized differently based on whether IAB or the disciplinary system was being reviewed.¹¹ In addition, use of the past categories resulted in many prevalent allegations being relegated to “Other On-Duty Misconduct” or “Other Off-Duty Misconduct” categories in disciplinary cases, and to “Other” or “Other Crime” categories in IAB investigations. The change adopted with this Report will insure consistent categorization of similar conduct in both IAB investigations and disciplinary cases. It will also limit the number of cases assigned to catch-all categories, while allowing the Commission to compare dispositions and penalties more precisely in future annual reports.

A description of each category follows:

Bribery/Gratuities: Accepting or soliciting anything of value in exchange for favorable treatment, or accepting or soliciting any improper gifts, meals, merchandise, currency, or other item of value.

Computer Misuse: Unauthorized access and/or dissemination of information from a Department or law enforcement database.¹²

¹¹ *Eighteenth Annual Report* at p. 13 and pp. 39-41. *Seventeenth Annual Report of the Commission* (“*Seventeenth Annual Report*”) (November 2015) at p. 8 and pp. 41-42.

¹² The Commission excluded from this category using Department computer equipment to send personal e-mails or conduct non-Department related internet searches. That type of misconduct would be included in the Performance of Duty category because the subject officer would be engaging in personal activities at times he or she should be working.

Criminal Association: Associating with, and/or disclosing confidential information to, individuals known to have a criminal history or known to be engaging in criminal activities.

Domestic Incident: Misconduct involving a member of the service and a family member or someone with whom the member of the service had a present or past intimate or familial relationship.¹³ This category includes verbal disputes requiring the intervention of law enforcement, harassment, physical assaults, stalking, and violations of protective orders.

DWI/Unfit for Duty: Driving while intoxicated or impaired, or being intoxicated to the extent that the member of the service is unfit for duty.

FADO:¹⁴ On-duty excessive or unnecessary force or threatening use of force, abuse of authority, discourtesy to civilians, and offensive language.

Failure to Report Misconduct/Corruption: Failing to report known or suspected allegations of wrongdoing to IAB as required in the Patrol Guide.¹⁵ It also includes failure to notify the Department of the officer's own involvement in an off-duty unusual police incident.¹⁶

Firearms: Firearms-related misconduct including, improper display (off-duty) improper discharge (on or off-duty), failure to safeguard (on or off-duty), and possession of unauthorized firearms.¹⁷

Harassment/Improper Contact: Work place harassment between members of the service, or, harassment of, and/or improper contact with, victims, witnesses, or perpetrators.

¹³ This would also include incidents involving the current significant other of an ex-romantic partner or the ex-partner of a current boyfriend/girlfriend.

¹⁴ FADO is an acronym for "Force, Abuse of Authority, Discourtesy, and Offensive Language."

¹⁵ Patrol Guide §207-21 "Allegations of Corruption and Other Misconduct Against Members of the Service."

¹⁶ Patrol Guide §212-32 "Off Duty Incidents Involving Uniformed Members of the Service."

¹⁷ The unjustified on-duty display of a firearm would be included in the FADO category.

Insubordination: Defiance of a supervisor's authority, discourtesy toward a supervisor, and failure to obey a lawful order.

Minor Rules Violation: Includes misconduct related to adherence to post assignments, paperwork requirements, and general behavior while on-duty.

Narcotics: Possession, use, or trafficking of illegal drugs, or the improper possession, use, or sale of prescription medication. This category includes charges related to a Department drug test failure or the refusal to take such a test.

Performance of Duties: Nonfeasance of duty. This category includes failure to investigate, failure to report, failure to respond, failure to supervise, failure to appear in court or offer adequate testimony, and failure to take police action.

Perjury/False Statements: False, inaccurate, or misleading statements, regardless of the intent of the member of the service, including those made under oath or in an official Department or CCRB interview, false or inaccurate entries in Department records, and false statements to prosecutors or other investigative bodies.

Property: Broadly includes any allegations of missing or stolen property. Includes property missing/stolen/improperly released during any interaction between members of the service (MOS) and members of the public, or property missing/stolen from a Department facility, vehicle, etc. This category also includes allegations related to the handling of personal or Department property or evidence including failure to safeguard, failure to voucher, failure to secure, and damage to property.

Tow/Body Shop: Allegations of unauthorized business referrals and/or improper associations with tow or body shop businesses. Also includes allegations of not adhering to the Department's Directed Accident Towing Program and/or other tow procedures.

Unlawful Conduct: Allegations of MOS committing unlawful acts not otherwise categorized.

Miscellaneous: Includes allegations that do not readily fit into any of the other categories.

MONITORING IAB INVESTIGATIONS

A. Introduction

The Commission provides civilian oversight to IAB's investigations, practices, and policies. The Commission's independent, external scrutiny of individual cases and IAB methods provides City officials and the public with information regarding the quality of these confidential investigations, with the goal of increasing transparency and building public trust in the Department's anti-corruption efforts. In addition to personal attendance at monthly briefings where IAB summarizes significant corruption cases for the Police Commissioner, the Commission monitors IAB's investigations in three primary ways: participation in IAB Steering Committee meetings, attendance at IAB field offices for case reviews, and in-depth review of closed investigations.

B. The Commission's Attendance at Steering Committee Meetings

Throughout 2017 and 2018, Commission staff attended IAB Steering Committee meetings. The Steering Committee is comprised of the executive staff of IAB, and meetings are chaired by either the Commanding Officer of IAB, the Executive Officer of IAB, or the IAB Chief of Criminal Investigations. Three times during the year, each IAB group¹⁸ presents summaries of all of its pending corruption investigations ("C" cases),¹⁹ and receives investigative recommendations from the Steering Committee.²⁰ Commanding officers also identify patterns of

¹⁸ IAB is currently comprised of 23 investigative groups. Some of these groups cover a specific geographic area of New York City, while others investigate cases involving specific categories of members of the service or certain types of misconduct. Four of the groups primarily provide supportive services for the other investigative groups. Group 9, IAB's overnight call-out group, does not carry its own caseload and therefore does not make presentations to the Steering Committee.

¹⁹ See *infra* at pp. 12 and 14-15 for a description of corruption or "C" cases and other case types.

²⁰ In 2017, the Steering Committee was composed of four chiefs and the Deputy Commissioner of the Internal Affairs Bureau. For the majority of 2018, the Steering Committee was composed of the Deputy Commissioner of the Internal Affairs Bureau, two chiefs, and two inspectors.

corruption or serious misconduct within their areas of responsibility and discuss proactive measures to uncover corruption, serious misconduct, or other violations of Department rules. The Steering Committee meetings keep the Commission abreast of developments in active investigations and provide the opportunity to observe the investigative oversight provided by IAB's executive staff.

C. The Commission's Attendance at Case Reviews

In addition to the Steering Committee meetings, which are attended by the executive staff of IAB, other case reviews are held in IAB field offices. During these reviews, usually held once or twice per year per IAB group, each group²¹ presents its entire active caseload, including all corruption ("C" cases), misconduct ("M" cases), and outside guidelines ("OG") cases²² to Commission staff and the zone supervisors.²³ In these meetings, inspectors and Commission staff are able to provide investigative recommendations to the commanding officer and his lieutenants. The Commission is able to keep abreast of the entire IAB caseload through these reviews. Commission staff attended 23 of these case reviews in 2017 and an additional 20 reviews in 2018. These reviews facilitate increased interaction between Commission staff and IAB group personnel, providing the Commission staff with an opportunity to discuss investigations or issues in greater detail than at the more formal Steering Committee meetings.

²¹ The Commission staff does not attend case reviews for Groups 2, 7, 9, 52, and 55 as these are primarily groups that provide support services for other investigative groups. The Commission staff also does not attend case reviews with the Special Investigations Unit and Group 25, as they present their entire caseloads at each Steering Meeting. Finally, the Commission staff also does not attend case reviews for Group 51, which investigates impersonations of members of law enforcement.

²² See *infra* at pp. 14-15 for a description of corruption, misconduct, and outside guidelines case classifications.

²³ IAB's investigative groups are divided into three zones: 1) the four investigative groups that cover Manhattan and the Bronx; 2) the six investigative groups that cover Queens, Brooklyn, and Staten Island; and 3) the five investigative groups that cover detectives (2 groups divided by geography), traffic agents, school safety agents, and investigations involving the excessive use of force. Each zone has a zone commander and an executive officer. Together, they are the zone supervisors and review the majority of the investigations prior to their closure.

D. The Commission's Review of Closed IAB Investigations

1. Introduction

The Commission reviews a randomly selected sample of IAB investigations that were closed during both the 2017 and 2018 calendar years to evaluate whether they were fair, thorough, accurate, and impartial.

Where an investigation involves multiple allegations, the Commission evaluates the disposition of each allegation. In general, the Commission reports on deficiencies found in multiple cases, and significant shortcomings that appear in individual cases. Minor, isolated errors are generally not highlighted in the Annual Report. However, the Commission discusses all perceived areas for improvement with IAB group and zone commanders. For this Report, the Commission conducted in-depth reviews of 89 closed IAB investigations in 2017 and 44 closed investigations in 2018.

2. Methodology

In assessing IAB's investigations, the Commission focused on the following areas:

- a. Timeliness:
 - Was the length of the investigation reasonable?
 - Were there unexplained gaps in the investigation?
 - Did the statute of limitations for any misconduct expire during the course of the investigation?
- b. Identification of and interviews with complainants, witnesses (both civilians and members of the service), and subject officers:
 - Were reasonable steps taken to identify and interview witnesses and subject officers in a timely manner?
 - Were appropriate background checks completed?
 - Were interviews recorded?
 - Were interviews completely and accurately summarized in worksheets?
 - Were interviews thorough and unbiased?
- c. Evidence collection and analysis:
 - Were reasonable, timely efforts made to obtain evidence?
 - Was any relevant evidence overlooked?

- Was evidence analyzed properly?
 - Were all investigative steps documented?
 - Were team leader reviews regularly conducted and effective?
- d. Case closing report:
- Was the closing report objectively written?
 - Were all of the allegations addressed?
 - Case disposition (including the disposition assigned to each allegation.)
 - Does the evidence in the file support the finding(s)?

3. General Analysis of Closed Investigations

The Commission randomly chose cases from IAB closed case lists that only identified the case number and investigative group. The Commission attempted to review an equal number of cases from each IAB group.²⁴ The 133 cases reviewed by the Commission involved 372 members of the service and 803 allegations.²⁵ The majority of these cases were corruption (“C”) cases. Investigations into allegations of wrongdoing are typically classified in one of three categories, depending on the seriousness of the allegations. “C” cases involve allegations of corruption and serious misconduct and are investigated solely by IAB.²⁶ Misconduct (“M”) cases contain allegations that are not considered to be as serious. Most “M” cases are investigated by Borough or Bureau Investigations Units. Outside Guidelines (“OG”) cases involve allegations of minor infractions or violations of Department regulations. These allegations can be investigated at the precinct level as well as by other investigative entities

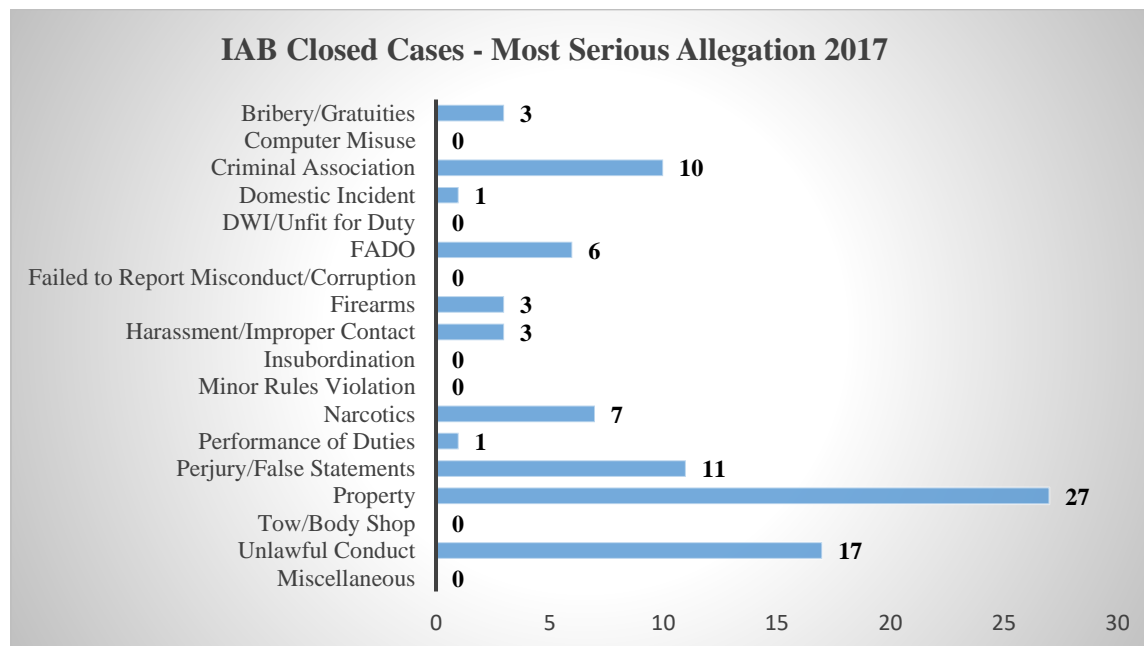
²⁴ The Commission does not review cases from Group 51 because that group investigates cases involving impersonations of law enforcement officers. The Commission also does not review any Group 55 cases as that group does not carry its own caseload but rather provides surveillance operations for cases being investigated by other groups.

²⁵ The Commission did not include allegations added to a case for purely administrative purposes, such as to denote that a subject officer received charges and specifications.

²⁶ The Commission typically limits its review of closed cases to IAB “C” cases, however, during this review, one case was a Misconduct (“M”) investigation and one case was a Programmatic Review (“PR”) case.

within the Department, including IAB.²⁷

The breakdown of the most significant allegations in the reviewed cases appears in the charts below and on the following page.²⁸

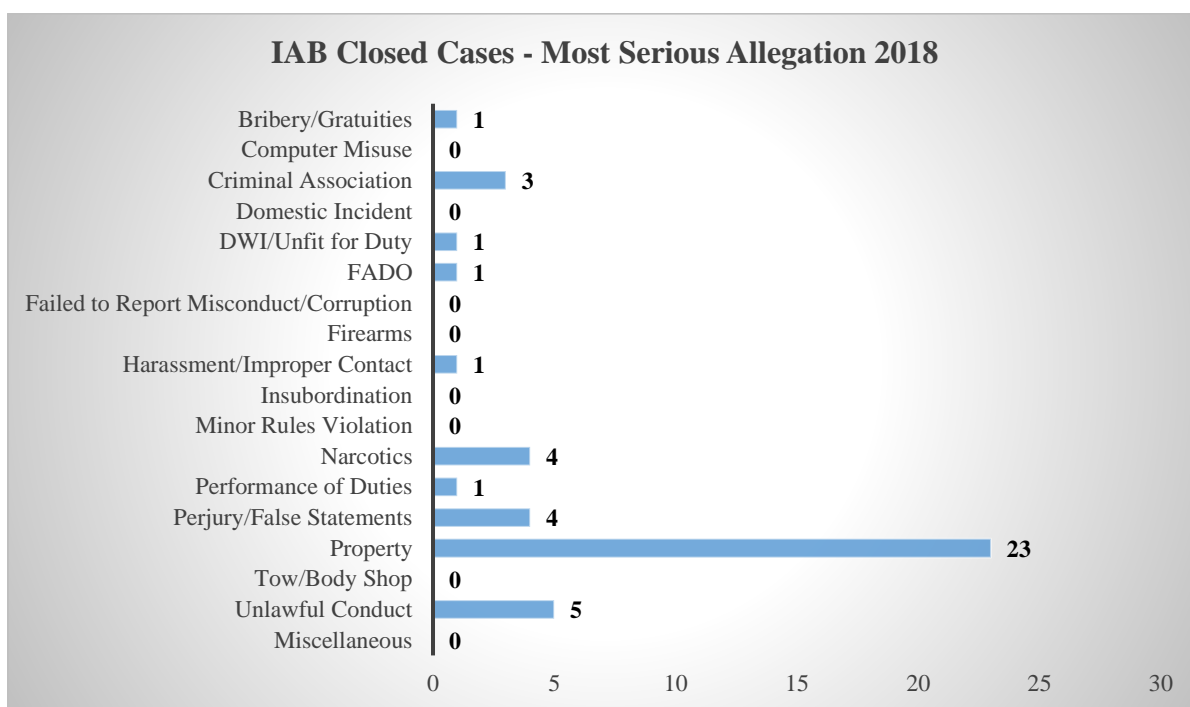


As in 2017, the most prevalent allegation was that of Property. This was followed by Unlawful Conduct,²⁹ and Perjury/False Statements.

²⁷ Other typical case classifications include Self-Initiated (“SI”) cases and Programmatic Review (“PR”) cases. In “SI” cases, IAB initiates an investigation based upon information that it developed or other warning indications in an officer’s personnel history. In “PR” cases, IAB revisits a closed investigation to determine if further inquiry produces evidence to support the original allegation. During the reporting period here, a new classification for Force cases “FI” was introduced. Depending on the nature of the alleged force, these cases are investigated by the Departments Force Investigation Division, IAB’s Group 54, or a Borough or Bureau Investigation Unit.

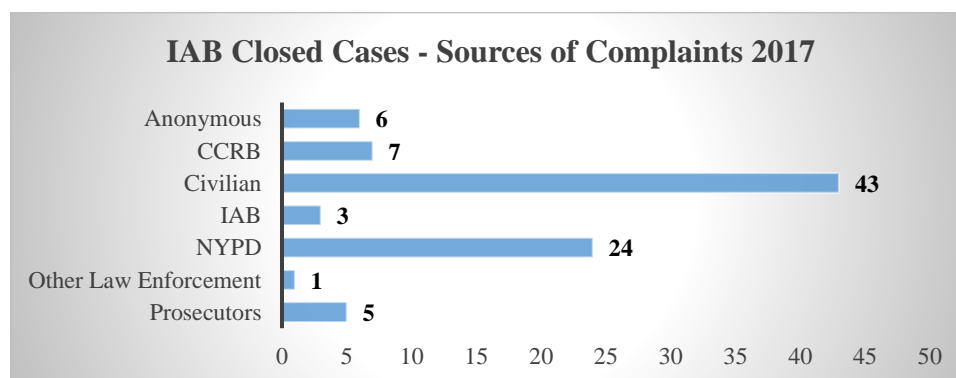
²⁸ In the 2017 cases reviewed, the Unlawful Conduct category included the following allegations: flaking (4 cases), fraud (4 cases), gambling (2 cases), harassment, larceny (4 cases), official misconduct, and promoting prostitution.

²⁹ In the 2018 cases reviewed, the Unlawful Conduct category included flaking (2 cases), leaving the scene of an accident, patronizing a prostitute, and selling confidential information.



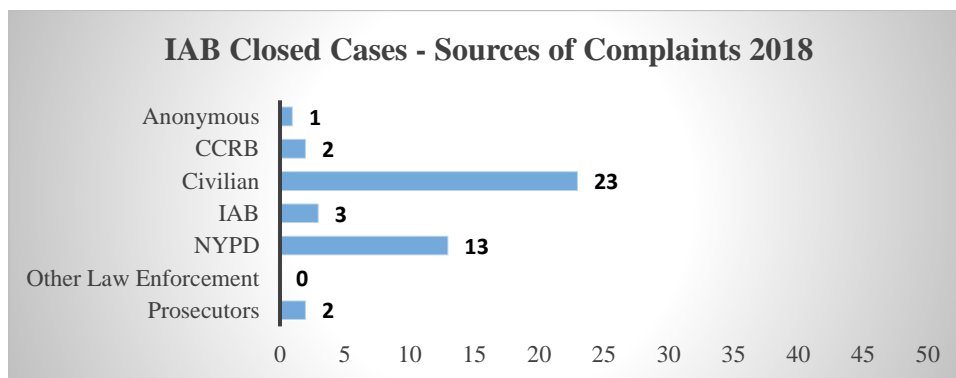
a. Sources of Complaints

In 2017, civilians initiated 48% of the reviewed cases. These include instances where civilians contacted other entities and had their complaints forwarded to IAB.³⁰ Members of the NYPD initiated 27% of the reviewed cases. The following charts present the sources of complaints for the cases reviewed by the Commission for this Report.



³⁰ In past reports, the Commission only counted the civilian as the source if he or she made the complaint directly to IAB. If the civilian made the complaint to CCRB or another member of the NYPD who then made the report to IAB, the source was considered to be that entity. For this reason, the Commission cannot compare the sources for the investigations reviewed for this Report, to the sources for the investigations reviewed for prior reports.

For the investigations reviewed in 2018, civilians were the sources of a majority of complaints -- 52%. Members of the NYPD originated the second highest number of complaints at 30%.



b. Investigation Length

Pursuant to state statute, the NYPD must administratively charge a subject officer within 18 months of the last date that the alleged misconduct took place.³¹ This statute of limitations (SOL) does not apply in cases where the alleged misconduct would constitute a crime if proven in a criminal proceeding.³²

The Commission analyzed the length of the IAB investigations reviewed during this reporting period from the start of the investigation (when the Department received notification of the allegations), until the conclusion (when the case was closed, each allegation was given a disposition, and the IAB supervisory review process was completed). In its analysis of the investigation length, the Commission examined whether the Department had lost the opportunity to impose discipline for any misconduct due to the expiration of the SOL. The Commission also assessed whether an investigation remained open longer than necessary based upon the

³¹ N.Y. Civil Service Law § 75(4).

³² *Id.*

allegations and the investigative steps conducted.

The IAB investigations reviewed in 2017 averaged 11.8 months with the shortest lasting 2 months, and the longest 33 months. Eighty-two percent of the investigations reviewed were completed within eighteen months. In three of those cases, the Commission believed that given the nature of the allegations, the actual investigative steps taken, and the evidence collected, the investigations could have concluded in significantly less time.

The average length of the investigations reviewed in 2017 was slightly less than the average length of the investigations reviewed in 2015, but longer than the average length of the investigations reviewed in the first eight months of 2016. However, the average length of the investigations reviewed in 2018 was the lowest since the Commission began measuring this time period. The Commission views this decreased length favorably as long as important investigative steps are not missed. Despite this decreased average length, there was one case reviewed in 2018 that the Commission believed took too long to conclude given the nature of the allegations and the investigative steps taken. Overall, the Commission finds that in most cases, IAB investigators try to close the cases in a timely manner.

The tables below and on the next page compares the length of investigations reviewed by the Commission over the last five years.

| Average Investigation Length in Months by Year | | | | | |
|--|------|------|--------------------|------|------|
| Year | 2014 | 2015 | 2016 ³³ | 2017 | 2018 |
| Months | 13 | 12 | 10 | 11.8 | 9.1 |

³³ The Commission only included cases reviewed during the first eight months of 2016 to coincide with the conclusion of Commissioner Bratton's term.

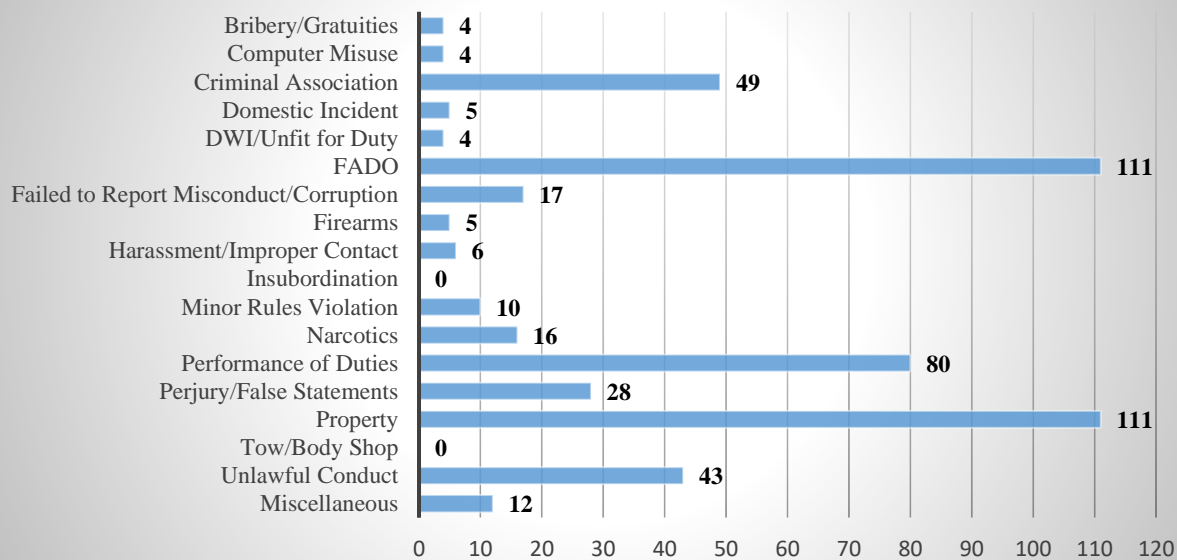
| Length of Investigations Reviewed | | | | | | | | | | |
|--|--------------------|-----|--------------------|-----|--------------------|-----|--------------------|-----|--------------------|----|
| | <u>2014</u> | | <u>2015</u> | | <u>2016</u> | | <u>2017</u> | | <u>2018</u> | |
| | Cases | % | Cases | % | Cases | % | Cases | % | Cases | % |
| 6 months or less | 24 | 26% | 27 | 32% | 19 | 35% | 23 | 26% | 19 | 43 |
| 7-12 Months | 29 | 31% | 28 | 33% | 19 | 35% | 33 | 37% | 13 | 30 |
| 13-18 Months | 22 | 23% | 12 | 14% | 9 | 16% | 17 | 19% | 9 | 20 |
| 19-24 Months | 10 | 11% | 10 | 12% | 4 | 7% | 7 | 8% | 2 | 5 |
| > 25 Months | 9 | 10% | 7 | 8% | 4 | 7% | 9 | 10% | 1 | 2 |

c. Types of Allegations

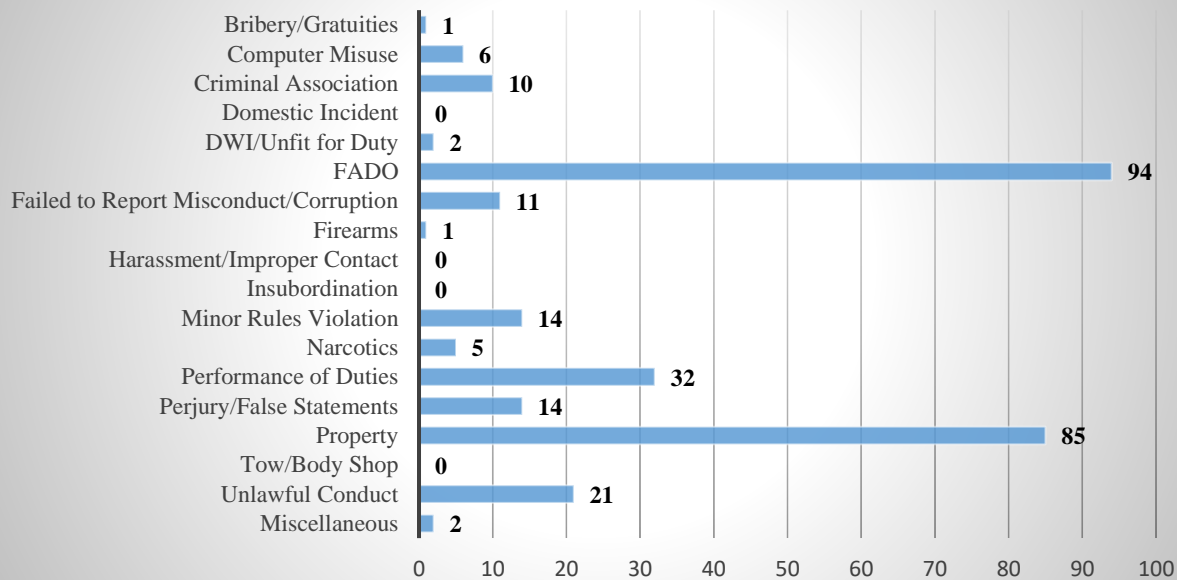
The 133 cases reviewed by the Commission contained 803 allegations of misconduct. The most prevalent allegations found in the cases reviewed in both 2017 and 2018 -- as opposed to the most serious allegations -- involved FADO, Property, and Performance of Duties.³⁴ The breakdown of all of the allegations investigated in these cases, by year, are set forth on the following page.

³⁴ IAB closed ten FADO allegations as Information and Intelligence and forwarded them to CCRB for investigation.

IAB Closed Cases - Allegations 2017



IAB Closed Cases - Allegations 2018



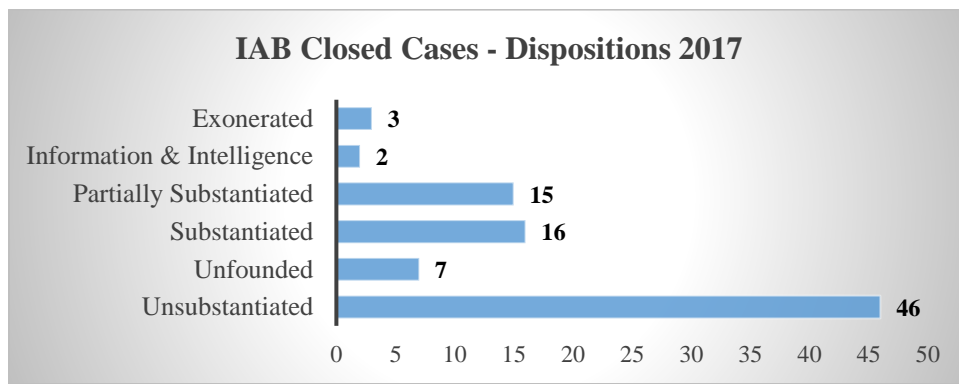
d. Dispositions

At the conclusion of an investigation, IAB typically assigns one of six dispositions to each allegation and to the overall case.³⁵ They are:

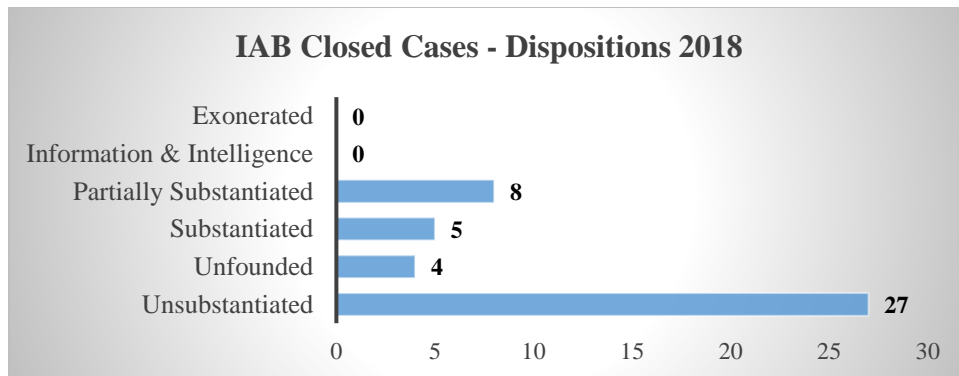
- ***Substantiated:*** The investigation determined that the accused member of the service committed the act of misconduct alleged. As applied to the overall case, the accused member of the service committed all of the acts of misconduct alleged.
- ***Partially Substantiated:*** The investigation determined that the accused member of the service committed some of the acts of misconduct alleged. A *Partially Substantiated* disposition only applies to the overall disposition for an entire case, not individual allegations.
- ***Unsubstantiated:*** The investigation was unable to clearly prove or disprove that the alleged misconduct occurred.
- ***Exonerated:*** The investigation clearly proved that the accused member of the service was involved in the incident, but his or her conduct was lawful and proper.
- ***Unfounded:*** The investigation found that the alleged misconduct did not occur, was not committed by the member of the service who was the subject of the allegation, or was not committed by members of the NYPD. (In some cases, when it is determined that an officer was mistakenly identified as a subject, the officer can be removed as a subject from the complaint so he or she does not have the allegation in his or her personnel records.)
- ***Information & Intelligence:*** The investigation found insufficient evidence to substantiate the allegation, but IAB is tracking the conduct alleged for intelligence purposes, or, the allegation constituted minor misconduct and the subject officer's command addressed the misconduct at IAB's request. Allegations forwarded to CCRB for investigation receive this disposition as well.

The charts on the next page depict the overall dispositions for the cases reviewed by the Commission for this Report.

³⁵ These are the most common dispositions given to allegations and is not an exhaustive list.



As in the year prior, the majority of the allegations in 2018 were unsubstantiated.

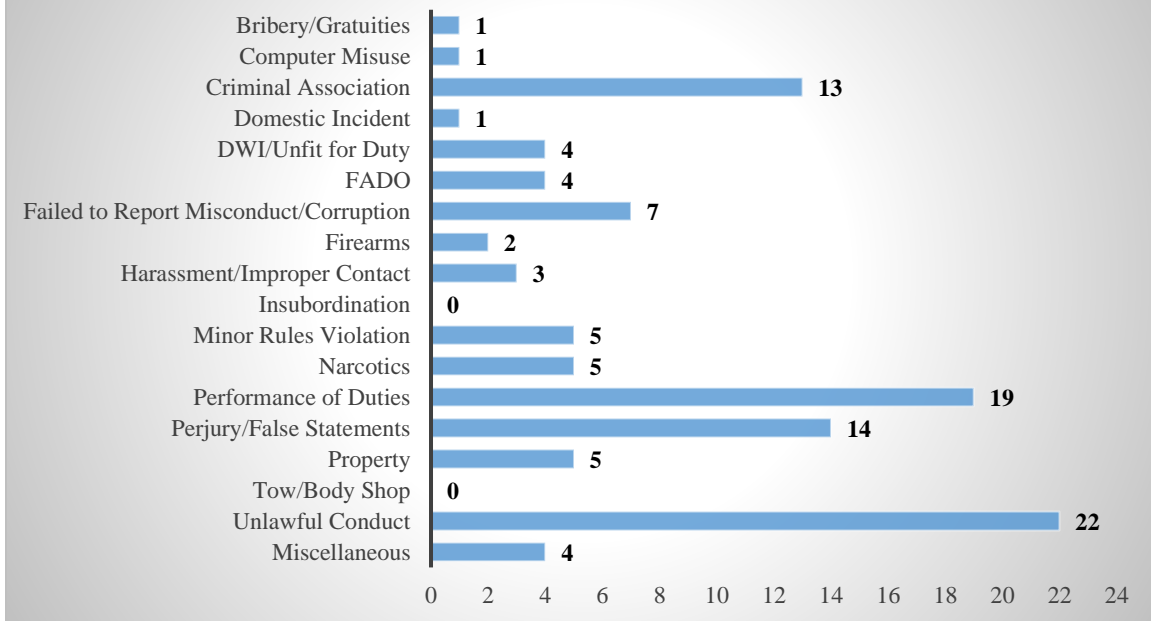


e. Substantiated Allegations

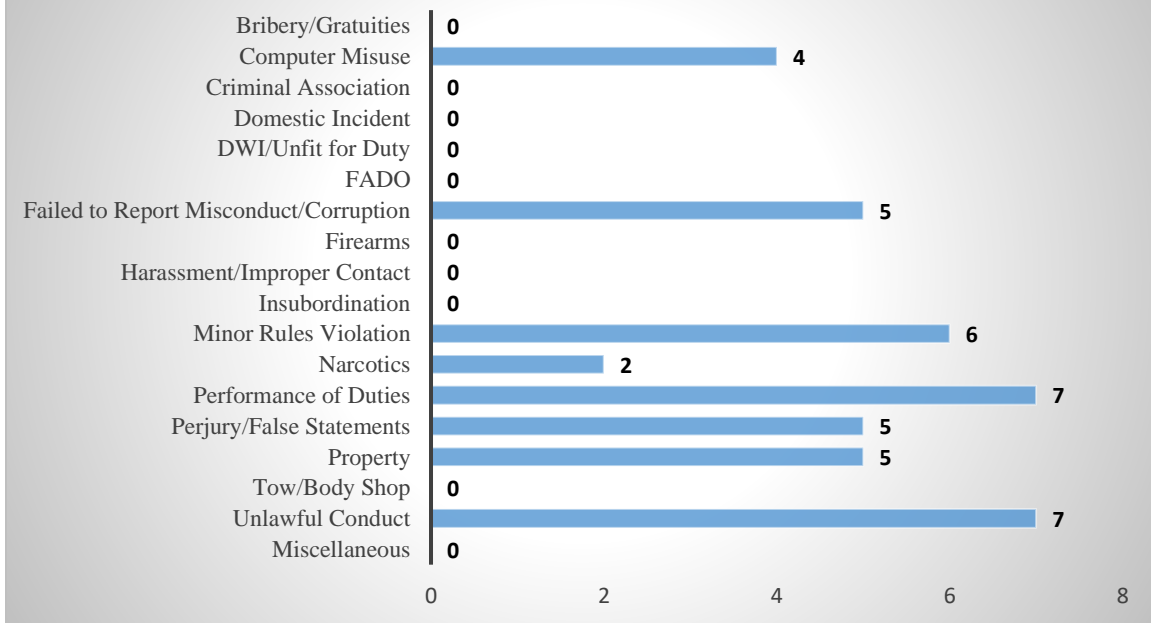
In 31 of the 89 cases reviewed in 2017, approximately 35% of the cases, IAB closed the case with at least one substantiated allegation. In addition, fifteen other cases that were closed as unsubstantiated, unfounded, or exonerated contained at least one allegation closed with a letter of instruction from IAB or referred to the command of the subject officer to address. For the cases reviewed in 2018, at approximately 30%, there was a slight decrease in the percentage of cases with at least one substantiated allegation.

The charts on the next page summarize the substantiated allegations of the closed cases reviewed by the Commission.

IAB Closed Cases - Substantiated Allegations 2017



IAB Closed Cases - Substantiated Allegations 2018



For both years, the largest numbers of substantiated allegations fell within the Unlawful Conduct and Performance of Duties categories. The most notable decrease was the substantiated

allegations of Criminal Association. Almost 27% of the Criminal Association allegations that were closed in 2017 were substantiated, while none of the Criminal Association allegations closed in 2018 were substantiated.

The charts below and on the next page sets forth the dispositions of the most serious allegations contained in each of the reviewed cases.³⁶

| 2017 Disposition of Most Serious Allegations | | | | | | |
|---|-------------------|----------------------|------------------|------------------------|-------------------------|--------------|
| Case Type | Exonerated | Substantiated | Unfounded | Unsubstantiated | Info & Intel | Total |
| Bribery/Gratuities | - | 1 | 2 | - | - | 3 |
| Criminal Association | - | 3 | 1 | 6 | - | 10 |
| Domestic Incident | - | 1 | - | - | - | 1 |
| FADO | 2 | 1 | 1 | 2 | - | 6 |
| Firearms | - | 1 | - | 2 | - | 3 |
| Harassment/Improper Contact | - | 1 | - | 2 | - | 3 |
| Narcotics | - | 3 | 1 | 3 | - | 7 |
| Performance of Duties | - | 1 | - | - | - | 1 |
| Perjury/False Statements | - | 5 | - | 5 | 1 | 11 |
| Property | - | - | 4 | 23 | - | 27 |
| Unlawful Conduct | - | 7 | 2 | 8 | - | 17 |
| Total | 2 | 24 | 11 | 51 | 1 | 89 |

In 2017, the substantiation rate of the most serious allegation for each case reviewed by the Commission (the allegation the Commission used to determine the case type) was 27%. In 42% of the cases reviewed, IAB was able to assign a definitive disposition for the most serious allegations resulting in either a substantiated, unfounded, or an exonerated disposition.

In 2018, the substantiation rate of the most serious allegation decreased to approximately 14%. As with the cases closed in 2017, the majority of the most serious allegations were closed with the disposition of unsubstantiated. Definitive dispositions for the most serious allegations were only assigned in approximately 23% of the cases reviewed.

³⁶ These were the most serious allegations that were depicted in the tables *supra* at pp. 15-16.

| 2018 Disposition of Most Serious Allegations | | | | | | |
|---|-------------------|----------------------|------------------|------------------------|-------------------------|--------------|
| Case Type | Exonerated | Substantiated | Unfounded | Unsubstantiated | Info & Intel | Total |
| Bribery/Gratuities | - | - | - | 1 | - | 1 |
| Criminal Association | - | - | - | 2 | 1 | 3 |
| DWI/Unfit for Duty | - | - | - | 1 | - | 1 |
| FADO | - | - | - | 1 | - | 1 |
| Harassment/ Improper Contact | - | - | - | - | 1 | 1 |
| Narcotics | - | 1 | 2 | 1 | - | 4 |
| Performance of Duties | - | 1 | - | - | - | 1 |
| Perjury/False Statements | - | 2 | - | 2 | - | 4 |
| Property | - | 1 | 2 | 20 | - | 23 |
| Unlawful Conduct | - | 1 | - | 4 | - | 5 |
| Total | 0 | 6 | 4 | 32 | 2 | 44 |

4. CCPC Analysis of Selected Trends

The Commission primarily assesses five areas when evaluating an investigation: 1) timeliness; 2) identification and interviews of complainants, witnesses, and subject officers; 3) evidence collection and analysis; 4) the case closing report; and 5) the overall case disposition. Within these five areas, the Commission has tracked seven individual components, either because of their importance (such as CCPC's agreement with the overall case disposition), or due to observations in previous Commission reports (such as the quality of investigators' interviews with civilians and members of the service). The following tables show the percentage of outcomes and investigative steps that the Commission found satisfactory (the "satisfaction rate") in these individual investigative areas for this Report, and a comparison of satisfaction rates over the last five years.

CCPC Satisfaction Rate

| Description | 2017 Cases | 2017 Rate | 2018 Cases | 2018 Rate |
|---|------------|-----------|------------|-----------|
| CCPC Agrees with Disposition | 86/89 | 97% | 43/44 | 98% |
| Interview of Available Witnesses | 69/89 | 78% | 36/44 | 82% |
| Accurate Summaries of Recorded Interviews | 78/89 | 88% | 36/44 | 82% |
| Adequate Interview Quality | 64/89 | 72% | 34/44 | 77% |
| Documentation of Investigative Steps | 75/89 | 84% | 40/44 | 91% |
| Timely Search for Video Evidence | 81/89 | 91% | 41/44 | 93% |
| Team Leader Reviews | 68/89 | 76% | 39/44 | 89% |

CCPC Satisfaction Rate – Year-over-Year Comparison

| Description | 2014 | 2015 | 2016 | 2017 | 2018 |
|---|------|------|------|------|------|
| CCPC Agrees with Disposition | 99% | 94% | 95% | 97% | 98% |
| Interview of Available Witnesses | 89% | 80% | 87% | 78% | 82% |
| Accurate Summaries of Recorded Interviews | 95% | 89% | 93% | 88% | 82% |
| Adequate Interview Quality | 91% | 70% | 78% | 72% | 77% |
| Documentation of Investigative Steps | 91% | 87% | 95% | 84% | 91% |
| Timely Search for Video Evidence | 98% | 88% | 98% | 91% | 93% |
| Team Leader Reviews | 82% | 69% | 80% | 76% | 89% |

a. Dispositions

The Commission determines, based upon its review, whether the information obtained by the investigator supports the overall disposition and the dispositions for individual allegations.

The Commission disagreed with dispositions in three closed cases reviewed for this Report.

- The Commission disagreed with the overall disposition in three cases: an Unlawful Conduct case closed as exonerated, and two Property cases closed as unfounded. The Commission believed that in all three cases, the information provided in the case files did not support such conclusive findings.
- In a Perjury/False Statement case, sufficient evidence existed to substantiate a false statement allegation against one subject officer. Although IAB requested charges against the subject officer for making a false statement, DAO declined to bring those charges. Consistent with Department policy, because the officer was not given an opportunity for a hearing on the matter, the allegation was ultimately unsubstantiated.

Over the years, the Commission has commented on the disposition of false statement allegations investigated by IAB. In the past, as well as in this Report, the Commission has identified cases in which IAB substantiated a false statement allegation and requested that DAO charge the subject officer with making a false statement, only to be informed by Department prosecutors that they would not bring false statement charges. Consistent with Department policy, IAB has then changed its final disposition of the false statement allegation from substantiated to unsubstantiated. (Although IAB has a disposition of substantiated-no further discipline, this is not generally used for allegations when DAO declines to bring charges because it believes more evidence is required.) While the Commission acknowledges an individual officer's right to have a hearing on any allegation determined to be substantiated, the Commission believes that another dispositional category, such as "unsubstantiated-DAO declined discipline" should be used in these circumstances. This would alert future investigators who review the officer's background that although the disposition was ultimately unsubstantiated due to DAO's belief that it lacked sufficient evidence to bring charges, IAB determined based on its investigation that the subject officer committed the misconduct. This type of disposition need not be limited to false statement allegations.

b. Interviews of Available Witnesses

For this Report, the Commission noted deficiencies in 30 cases related to the failure to interview witnesses.³⁷

- Fifteen cases involved a failure to interview civilians.
- Eleven cases involved a failure to interview members of the service.
- Four cases involved a failure to interview both civilians and members of the service.

³⁷ In six of these cases, IAB supervisors, in reviewing the matter, noted these deficiencies.

A related issue involved the identification of potential subject officers and witnesses who were either members of the service or civilians. In 11 cases, the Commission found deficiencies in making these identifications.³⁸

- Two cases involved the failure to identify possible subject officers.
- Seven cases involved a delay in identifying subject officers.
- One case involved a delay in identifying a subject officer and a failure to identify a possible subject officer.
- One case involved the failure to identify a member of the service and a civilian as possible subjects/witnesses.

c. Summaries of Recorded Interviews

The Commission reviews audio recordings of civilian interviews and official Department interviews of members of the service³⁹ and compares them to the summaries of these interviews prepared by IAB case investigators. These summaries are not transcripts. However, the Commission believes that the summaries should include details from the interview that are material to the investigation and accurately reflect the recorded interviews.

The Commission found 19 cases in which the worksheet summaries of interviews were inaccurate, incomplete, or both.

- In eight cases, the written summaries of interviews did not accurately reflect the audio recording.
- In seven cases, the written summaries of interviews did not include relevant information that was on the interview recordings.
- Four cases contained both inaccurate and incomplete summaries of interviews.

³⁸ An IAB supervisor noted this issue in three cases, after reviewing the investigations.

³⁹ Patrol Guide §206-13 requires members of the service to answer all questions posed to them in official Department interviews and warns that failure to do so can result in suspension and discipline.

A related issue involved the recording of interviews. IAB's current practice is to record all interviews of both civilians and members of the service unless exigent circumstances are present.⁴⁰ In the current review, the Commission identified 24 cases where the investigator either did not record an interview or did not record the whole interview, or else the recording was of poor quality.⁴¹ The Commission continues to encourage IAB to record all interviews and document those instances where it was not feasible to do so.

d. Interview Quality

The Commission has continuously commented on interview quality, beginning with its earliest reports.⁴² After receiving a draft of the *Eighteenth Annual Report*, IAB indicated that it would provide additional interview training for its investigators.

The Commission identified issues regarding the quality of interviews in 35 cases reviewed during this reporting period.⁴³ The two most prevalent issues were failing to cover all of the issues relevant to a particular witness or subject, and failing to ask appropriate follow-up questions based upon evidence gathered during the course of the investigation. There is some subjectivity in determining whether an investigator has asked all necessary questions in each

⁴⁰ IAB's current policy on recording civilian interviews does not include recordings telephone contacts made solely to schedule interviews. IAB instructs its investigators to begin recording if substantive conversation ensues during such contact. The Commission believes these contacts should be recorded.

⁴¹ After reviewing the investigations, IAB supervisors noted the lack of recordings in eight cases.

⁴² See *Monitoring Study: A Review of Investigations Conducted by the Internal Affairs Bureau* (October 1997) at pp. 41-42; *Performance Study: A Review of Internal Affairs Bureau Interrogations of Members of the Service* (March 2000); *Fourth Annual Report of the Commission* (November 1999) at pp. 28-34 and 41; *Fifth Annual Report of the Commission* (February 2001) at pp. 23-24; *Sixth Annual Report of the Commission* (December 2001) pp. 24-27; *Seventh Annual Report of the Commission* ("Seventh Annual Report") (February 2004) at pp. 35-41; *Eighth Annual Report of the Commission* ("Eighth Annual Report") (February 2005) at pp. 19-20; *Ninth Annual Report of the Commission* ("Ninth Annual Report") (February 2006) pp. 15-16; *Tenth Annual Report of the Commission* ("Tenth Annual Report") (February 2008) pp. 9-12; *Sixteenth Annual Report of the Commission* ("Sixteenth Annual Report") (October 2014) at pp. 25-26; *Seventeenth Annual Report* at pp. 30-31; and *Eighteenth Annual Report* at pp. 28-29.

⁴³ After reviewing the investigations, IAB supervisors noted issues regarding interview quality in four cases.

interview, consistent with case strategy. (For example, an investigator may decide not to ask a subject officer questions relating to a particular allegation to avoid alerting the officer to that aspect of the investigation while more evidence is sought). However, investigators should be prepared to ask follow-up questions or questions to clarify any ambiguities in the answers. Especially in the context of official Department interviews, questioning at times appeared perfunctory, with insufficient efforts made to obtain the details of what actually occurred. While the Commission does not advocate unnecessarily prolonging interviews, questioning that only seeks to obtain a denial, or that yields answers that are vague or can be interpreted multiple ways, or that does not challenge statements that seem incredible could result in failure to uncover evidence of serious misconduct that would have been revealed through more competent and persistent questioning. Also, this type of seemingly pro forma questioning may send a message to the subject officer and the delegate present with that officer that IAB places no credence in the allegations or does not view the allegations as sufficiently serious to merit any genuine inquiry.

In addition, the Commission noted interview techniques that violated best practices for obtaining the most reliable information. These included interviewing witnesses together, using close-ended questions, using witnesses as interpreters, ceding control of the interview to the subject officer's representatives, and failing to describe non-verbal responses and exhibits for the recording. When there is a good reason for departing from best practices, the Commission recommends that the reason be documented in the worksheet that summarizes the interview.

e. Documentation of Investigative Steps

Accurate, contemporaneous documentation of investigative steps allows supervisors to assess the progress of the case and prevents newly assigned investigators from duplicating steps.

The Commission found documentation issues in 18 cases it reviewed.⁴⁴

- In one case, there was a delay of thirteen days in documenting investigative activity. In a second case, there were delays of 31 days and 55 days before the investigative step was documented. These delays between the time of the investigative activities and their documentation were excessive, because important details may be forgotten or remembered inaccurately.
- In 13 cases, investigative activity lacked proper documentation.
- Three cases involved worksheets containing either inaccurate or incomplete information.

f. Search for Video Evidence

The availability and use of video evidence has increased substantially over the last few years. Video captured by the Department's own systems, commercial and residential closed circuit television, and video taken by cellular telephones can provide valuable evidence to prove or disprove a misconduct allegation. A search for possible video evidence should be conducted in the early stages of an investigation, along with the initial interview of the complainant, as the availability of video is often fleeting.

The Commission found 11 cases with issues related to video evidence.⁴⁵

- In five cases, there were no searches conducted for video evidence.
- In four cases, there were delayed searches for video evidence.
- In one case, the Commission believed more inquiry was needed to determine if video evidence existed.
- In the final case, although the initial investigators identified the existence of video cameras near the incident location, there was never any follow-up to determine whether the incident was captured by these cameras.

⁴⁴ After reviewing the investigations, an IAB supervisor noted a failure to document investigative steps in one case.

⁴⁵ After reviewing the investigations, IAB supervisors noted a failure to timely search for video in four cases.

In the *Eighteenth Annual Report*, the Commission recommended that IAB team leaders and/or commanding officers verify that searches for video evidence have been completed within the first 14 days of the investigation. The Commission did not observe any such verification in the cases reviewed for this Report, although it must be noted that many of the investigations reported here were commenced prior to the publication of the last annual report. The Commission is hopeful that this recommendation has now been implemented, and that future closed case reviews will make that readily apparent.

g. Team Leader Reviews

Team leader reviews are a managerial tool used to assess information gathered during an investigation and to guide future investigative steps. IAB guidelines require supervisors to conduct and document team leader reviews every 30 days. The reviews typically list investigative steps for the assigned investigator to complete. The Commission found issues related to team leader reviews in 26 cases reviewed for this Report.⁴⁶

- The Commission found nine cases lacking documentation of multiple team leader reviews.
- In 17 cases, steps directed by a team leader were not completed, or instructions had to be repeated by the team leader multiple times before completion, or were only completed after a delay.

When the Commission met with IAB's executive staff after its 2017 review, to discuss the issues it observed during its case audits, IAB indicated that even though its own guidelines call for team leader reviews every 30 days, team leaders and investigators conferred on cases in an informal matter on a regular basis and the absence of a small fraction of reviews over a lengthy investigation was not a cause for concern. To some extent, the Commission agrees. For

⁴⁶ After reviewing these investigations, IAB supervisors noted deficient team leader reviews in 12 of these cases.

example, when an investigator is actively trying to interview witnesses and obtain evidence and there are no apparent deficiencies, formal team leader review worksheets may not be necessary. If a case is stalled while waiting for subpoena results or a decision by either an outside prosecutor or DAO, it is not necessary to have monthly worksheets directing the investigator to follow up on the subpoena or with the prosecutor. The Commission generally considers these circumstances when evaluating the adequacy of team leader reviews, and does not critique cases that contain multiple team leader reviews and are missing only one or two when the missing reviews did not appear to affect the quality of the investigation. These considerations may account for the increase in the Commission's satisfaction rate with team leader reviews in the investigations reviewed during 2018. The Commission will continue to examine the quality of supervision in the investigations through examining team leader reviews, as well as the comments and notes by team leaders and commanding officers on each worksheet.

E. Conclusion

The Commission agreed with more of the dispositions of allegations in this Report than in the *Eighteenth Annual Report*. The Commission found the most issues surrounding the adequacy of investigators' interviews and observed unexplained failures to adhere to best interview practices.

The Commission recognizes that a determination of the interview quality is at times subjective, and that different reviewers may be more or less critical of a particular interview. Even so, the Commission's satisfaction rate with the questioning in these interviews has declined significantly from 2014. Despite an improvement in the cases reviewed in 2016 in both the interview of available witnesses and the quality of those interviews, the Commission's satisfaction rate in both areas decreased significantly for the cases it reviewed in 2017. Though there was an

increase in satisfaction rates in these areas in 2018, the 2018 rates were still below the 2016 rates.

The Commission has observed different interviewing skill levels among IAB's investigators. In an effort to improve the quality of interviews, in addition to more training, the Commission recommends that supervisors pair investigators who have less well-developed interview skills with those investigators they consider effective interviewers. The Commission also strongly suggests that every interview be treated as an important opportunity to gather information about an allegation, even when the investigator has some reason to believe the allegation may not be provable, or may not have merit. Interviews should not be treated as a pro forma exercise that must be completed in order to conclude the investigation. While there are interviews that are done well, the Commission is concerned that the overall quality of these interviews is not improving and there are still a significant number of cases in which readily available witnesses, civilians and members of the service are not interviewed.

Another issue that appeared to increase in frequency was a delay in the preparation of worksheets describing an investigative action. The Commission's satisfaction rate with the accurate summaries of interviews for the cases reviewed in 2018 was the lowest it has been since the Commission began tracking this measure. Documentation should occur as close in time as possible to the investigative action, and when a recording is available, the investigator should also review the recording immediately prior to completing the documentation.

A third area of concern was that many cases were missing several supervisory, team leader reviews. However, the Commission did see a significant improvement in this issue in the investigations reviewed during calendar year 2018. The Commission hopes to see further improvement going forward.

The Commission found IAB to be receptive to its concerns, and does not believe that IAB is failing in its mission to uncover and gather evidence of corruption and serious misconduct. In almost all of the cases, the Commission believed that IAB's conclusions regarding what occurred were correct. Executive staff at IAB also continue to cooperate with the monitoring efforts of the Commission. IAB also encourages recommendations on individual cases from Commission staff during Steering Committee meetings and case reviews.

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REVIEW OF CLOSED DISCIPLINARY CASES

A. Introduction

The Department Advocate's Office (DAO) prosecutes administrative cases against members of the service after NYPD investigators substantiate allegations. The Administrative Prosecution Unit (APU) of the Civilian Complaint Review Board (CCRB) also prosecutes administrative cases against members of the service based on substantiated CCRB investigations into excessive or unnecessary force, abuse of authority, discourtesy, or offensive language (FADO).⁴⁷ Department Trial Commissioners preside over administrative trials and recommend factual findings and administrative penalties to the Police Commissioner after considering recommendations made by DAO or APU. The Police Commissioner is responsible for final decisions regarding guilt and the imposition of penalties in all cases.⁴⁸

The Commission reviews NYPD disciplinary records to evaluate whether the penalties adequately address the misconduct at issue and are sufficiently severe to serve as a deterrent. The primary factors used in the Commission's review are the nature of the offense and the subject officer's disciplinary and performance history, particularly in combination with the officer's length of employment. For this Report, the Commission evaluated 432 disciplinary cases containing 1,216 allegations that were adjudicated between October 2016 and September 2017 ("first review period"). These 432 cases involved 404 members of the service.⁴⁹ The

⁴⁷ CCRB is a separate city agency that has jurisdiction to conduct investigations of FADO complaints against uniformed members of the service. NYPD investigators may conduct concurrent investigations into these allegations as well. The Commission, with its mandate to focus upon corruption, does not review CCRB investigations except when they are included as evidence within IAB investigations.

⁴⁸ N.Y.C. Administrative Code § 14-115(a).

⁴⁹ Twenty-three members of the service had multiple cases involving separate charges and specifications that were resolved with a single penalty.

Commission also reviewed 498 cases containing 1491 allegations that were adjudicated between October 2017 and September 2018 (“second review period”). These 498 cases involved 450 members of the service.⁵⁰

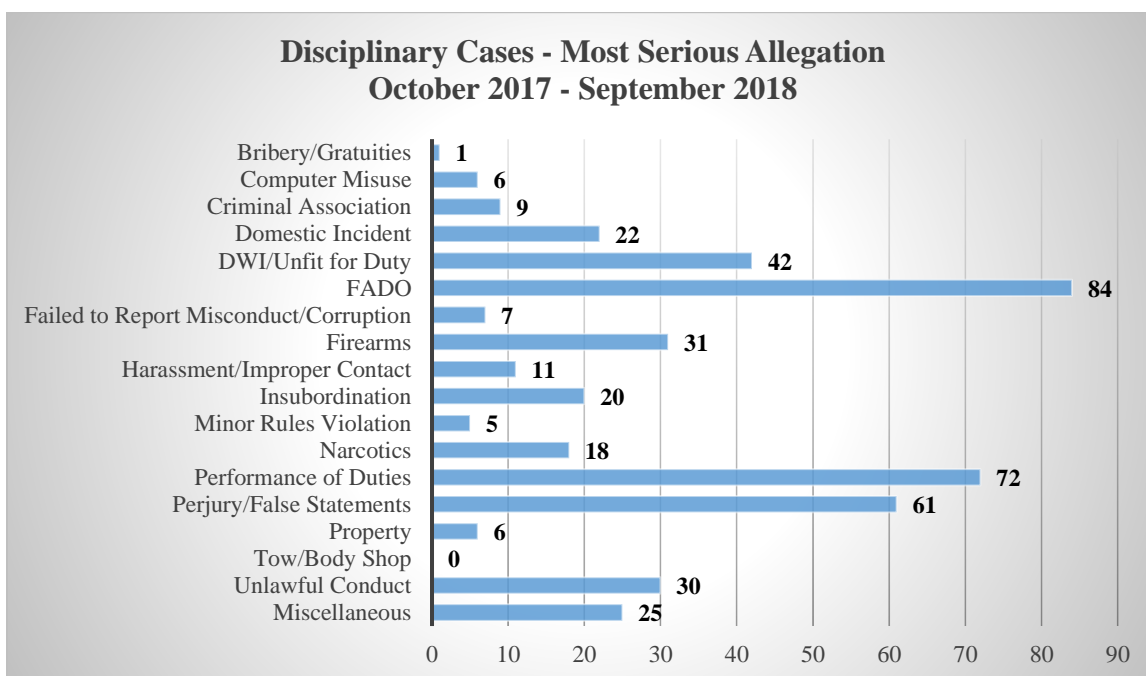
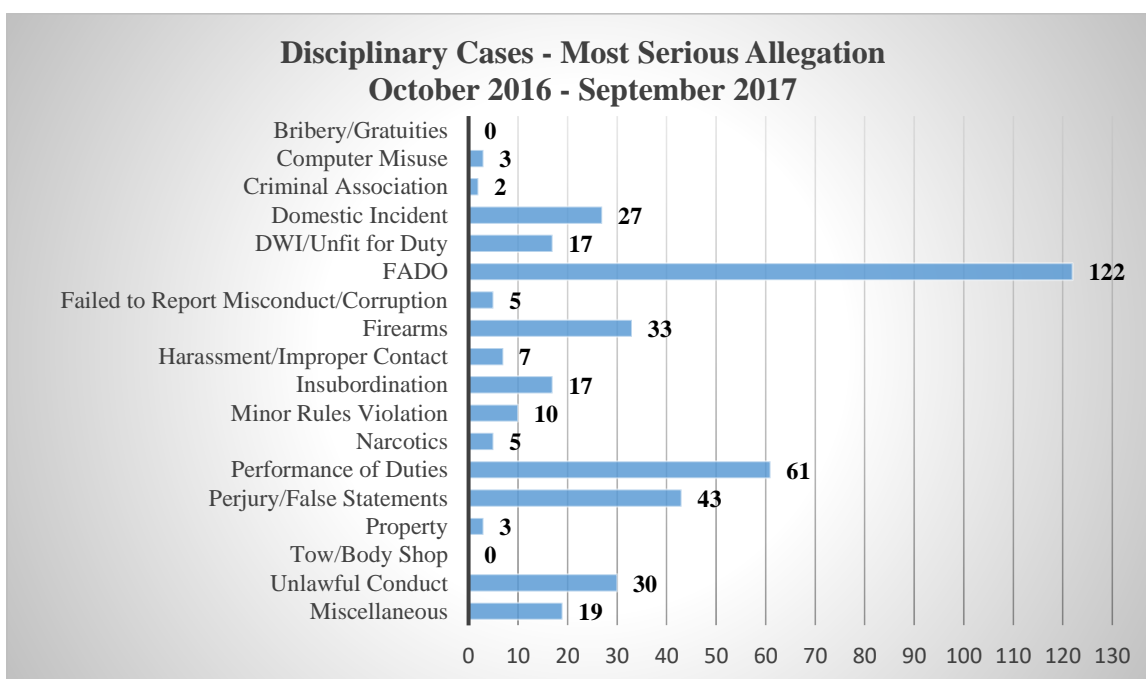
B. General Analysis of Disciplinary Cases

1. Case Categories

The charts on the following page display the most serious allegation for each of the 404 members of the service facing discipline during the first review period and of the 450 members of the service who were disciplined in the following 12 months.⁵¹

⁵⁰ Thirty-seven members of the service had multiple cases involving separate charges and specifications. In both review periods, some members of the service had multiple cases that were adjudicated separately, either during the review period or across both review periods. Of the 854 members of the service whose cases were reviewed over both periods, 21 members of the service were actually represented in more than one adjudication.

⁵¹ As described in the beginning of this Report, (*supra* at pp. 7-10) the Commission now uses the same categories for both IAB and DAO cases and allegations. The Commission usually assigned a case category based upon the most serious allegation of which the subject officer was found guilty. The most serious allegation was determined based upon what the Commission believed to be most serious. If the subject officer was found not guilty of all of the allegations, the Commission used what it considered the most serious allegation with which the subject officer was charged. There were some cases, such as those involving DWI, in which Department guidelines dictate the appropriate penalty. When a case involved one of those offenses, the Commission placed the case in the case category most closely aligned with the imposed penalty regardless of which allegation the Commission deemed to be most serious. Twenty-three members of the service faced multiple disciplinary cases that were adjudicated concurrently.



When comparing case categories from both reporting periods, there were increases, by percentage of the total number of disciplinary cases, in all case categories except Domestic Incidents, FADO, Firearms, and Minor Rules Violations, which all decreased. The categories of Insubordination and Unlawful Conduct represented similar percentages of the total case

categories in both review periods. The most significant increases were in the percentage of DWI/Unfit for Duty (4% versus 9%) cases⁵² and Narcotics cases (1% versus 4%), while the most significant decrease was in the percentage of FADO cases (30% versus 19%).

The Commission looked more closely at the DWI/Unfit for Duty cases but could not find any reason for the increase in cases. Of the 42 cases adjudicated during the second review period, in 28, the officers pled or were found guilty of DWI. Two other officers had charges filed against them alleging that they drove while intoxicated; however, they separated from the Department prior to the adjudication of those charges. Twelve officers pled guilty to consuming an intoxicant to the extent that they were unfit for duty, two of these incidents occurred while the officers were on duty.⁵³ Most of the DWI incidents occurred in 2016. Three of the incidents occurred in 2015, seventeen in 2016, and ten in 2017. The Department also noted this increase and in an attempt to stem this misconduct, began imposing greater penalties beginning in the fall of 2017. The Commission will continue to monitor DWI/Unfit for Duty cases to see if these greater penalties have the desired deterrent effect.

In examining the Narcotics cases, the Commission found that in the first review period, the five officers with narcotics cases were all separated from the Department. Four resigned prior to the adjudication of the charges and one was terminated by operation of law after he was found guilty of Conspiracy to Distribute Narcotics and Possession of Firearms in Furtherance of the Narcotics Conspiracy. Three of these officers appeared to fail drug tests, while two were caught selling narcotics. The three officers who were charged with using drugs were alleged to

⁵² For both the *Eighteenth* and *Seventeenth Annual Reports*, approximately 5% of the disciplinary cases were in the DWI/Unfit for Duty category.

⁵³ In these 12 cases, the officers were charged with being Unfit for Duty, but not with DWI or Driving While Ability Was Impaired.

have used cocaine and two of these three also allegedly abused an opiate available by prescription. Four of these officers held the rank of police officer, while the remaining member of the service was a sergeant. All of these officers had been employed by the Department for more than five years; two had fifteen years of employment at the time the narcotics related conduct was discovered.

In the second review period, one of the officers who had a narcotics case was permitted to retain his employment. This police officer had been found guilty after a trial of ingesting and possessing 1-Testosterone, however the Trial Commissioner believed the officer's claims that he had purchased bodybuilding products over the internet that were readily available in various stores. The officer was placed on dismissal probation, forfeited 60 penalty days,⁵⁴ and was required to undergo 2 random drug screenings during his dismissal probation period. He also was demoted from the rank of detective.

Of the remaining seventeen officers, eight had charges filed against them after they resigned,⁵⁵ three agreed to negotiated settlements that included an early retirement as part of the penalty, four were terminated, and two were terminated by operation of law. Of the eight who resigned, six were alleged to have used prohibited substances (two marijuana, three cocaine, and one steroids), one was alleged to have possessed drug paraphernalia, and one was alleged to have possessed and distributed heroin. Six were police officers, one was a detective, and one was a sergeant. Three had between two and a half and five years with the Department, two had between seven and ten years, and three had fourteen or more years. Two police officers were terminated by operation of law after being found criminally liable for possessing controlled

⁵⁴ Penalty days refers to vacation days, days suspended, or some combination of the two.

⁵⁵ One of these officers had two other disciplinary cases that also concluded with "charges filed." These other cases did not involve narcotics. See *infra* at p. 54 for an explanation concerning when charges are filed.

substances. Both were engaged in transporting narcotics. One had been employed by the Department for six years and the other had twenty-three years of service. The three police officers who were permitted to retire with partial pensions all pled guilty to using steroids. They had between nine and thirteen years of service with the Department. All of the four members of the service who were terminated after Department trials were found guilty of using prohibited substances. Two used amphetamines, one used cocaine, and the remaining one used marijuana. All were discovered after Department drug testing. One was a police officer, two were detectives, and one was a sergeant. All had more than ten years of service.

The Commission analyzed the FADO cases and found that in the second review period, APU prosecuted fewer cases involving the use or threat of physical force and the abuse of authority, while DAO prosecuted more cases in these categories. APU's largest decrease was in the abuse of authority cases, particularly those cases involving frisks, searches, and entries into premises without sufficient legal authority.

2. Discipline by Rank

The table below reflects the number of disciplinary cases for each rank in the Department for the disciplinary cases adjudicated during the first review period.

| Rank | No. of MOS | % |
|------------------|-------------------|-------------|
| Police Officer | 248 | 61% |
| Detective | 65 | 16% |
| Sergeant | 74 | 18% |
| Lieutenant | 12 | 3% |
| Captain | 2 | <1% |
| Deputy Inspector | 1 | <1% |
| Inspector | 1 | <1% |
| Chief | 1 | <1% |
| Total | 404 | 100% |

As can be seen in the following table, while for most ranks there were minor percentage changes in disciplinary cases from the first period to the second, the number of lieutenants charged more than doubled (from 12 to 30), and the percentage of cases against lieutenants increased significantly (from 3% to 7%).

| Rank | No. of MOS | % |
|------------------|------------|-------------|
| Police Officer | 291 | 65% |
| Detective | 61 | 14% |
| Sergeant | 63 | 14% |
| Lieutenant | 30 | 7% |
| Captain | 3 | <1% |
| Deputy Inspector | 2 | <1% |
| Inspector | 0 | 0 |
| Chief | 0 | 0 |
| Total | 450 | 100% |

The Commission further examined the cases brought against lieutenants for both time periods. Of the twelve lieutenants whose cases were adjudicated during the first review period, four were not lieutenants at the time of the alleged misconduct. Three had been sergeants who were subsequently promoted, and one was a captain who was demoted as a result of the misconduct. Of the remaining eight lieutenants, two were found not guilty of the charges against them—although one of those two had two other cases for which he received discipline during the second review period. The six cases adjudicated against lieutenants for which discipline was imposed did not disclose any pattern of allegations. One involved the failure to report misconduct to the Department.⁵⁶ One involved the lieutenant’s claim to be at work when he was not. This included submitting reports for compensation for overtime when he was not actually at work. One had two different incidents in which he failed properly to supervise his subordinates,

⁵⁶ This case is described in more detail at pp. 81-82, *infra*.

one failed to safeguard his firearm, and the remaining two lieutenants failed adequately to perform the responsibilities associated with their respective assignments.⁵⁷

All of the lieutenants whose charges were adjudicated during the second review period held that rank at the time of their misconduct. Only one was found not guilty of all charges against him. Five of these lieutenants had two cases each, although one of these lieutenants was found not guilty of one of the cases against him. One other lieutenant had three cases adjudicated at the same time, which were covered by one penalty. Of the 29 lieutenants who were found guilty of at least 1 allegation, 11 of them were charged with failing to properly supervise their subordinates. Four of these eleven were also charged with the misuse of Department time, either by being absent from their assignments but indicating that they had been present, or by conducting personal business while on duty. An additional four lieutenants were also found guilty of misusing time when they were supposed to be working, but not charged with supervisory failures. This raises a concern for the Commission regarding the Department's mechanisms for supervising the supervisors, as almost 28% of the lieutenants charged were not actually working when they were supposed to do so.

Of the remaining fourteen lieutenants who were disciplined during the second review period, four had cases involving the abuse of their authority through authorizing or conducting an improper search, frisk, or arrest, or improperly issuing a summons. Two pled guilty to DWI, two failed to safeguard their firearms, and two had unauthorized off-duty employment. The remaining four displayed a variety of misconduct: falsifying Department records,⁵⁸ failing to

⁵⁷ One of these cases is described in more detail at p. 98, *infra*.

⁵⁸ Those cases involving the misuse of Department time often also had specifications involving causing inaccurate entries in Department records. The case here did not involve timekeeping records.

terminate a vehicle pursuit, insubordination, and making sexual advances towards an arrestee.

3. Discipline for High-Ranking Officers

In the *Eighteenth Annual Report*, the Commission reported on discipline meted out to high-ranking members of the service.⁵⁹ With respect to whether higher-ranking officers receive preferential treatment, the Commission was unable to draw any meaningful conclusions based on the small sample size but noted that it would continue to monitor discipline within the higher ranks. For the current reporting period, the Commission identified ten members of the service ranked captain or above who received discipline through the Department's formal disciplinary process.

⁵⁹ *Eighteenth Annual Report* at p. 42.

Cases by rank of captain and above, and the penalties imposed, are set forth in the chart below:

| Rank | Case Type | Most Serious Charge | Penalty⁶⁰ |
|-----------------------|-----------------------------|---|---------------------------------------|
| Chief | Domestic Incident | Physical altercation | 45 Vacation Days ⁶¹ |
| Inspector | Domestic Incident | Physical altercation | 30 Suspension Days ⁶² |
| Deputy Inspector | Performance of Duties | Failed to ensure Licensing Division guidelines were followed | Service Retirement, 45 Vacation Days |
| Captain | Harassment/Improper Contact | Made disparaging remarks directed at the religion or ethnicity of another Member of the Service | 20 Vacation Days ⁶³ |
| Captain | FADO – Force | Excessive force | 25 Vacation Days |
| Captain | Firearms | Failure to safeguard firearm | 20 Vacation Days |
| Captain | Perjury/False Statement | Made false and/or misleading statements during two separate official Department interviews | Dismissal Probation, 65 Vacation Days |
| Captain ⁶⁴ | DWI/Unfit for Duty | Made false and/or misleading statements during a Department interview | Service Retirement, 60 Vacation Days |
| Deputy Inspector | Performance of Duties | Conducted personal business while on Department time | Dismissal Probation, 65 Vacation Days |
| Deputy Inspector | Harassment/Improper Contact | Sexual Misconduct | Retired-Charges Filed |

⁶⁰ Penalties consisting of a determinate number of vacation days means that the subject officer forfeited those vacation days.

⁶¹ This case is discussed *infra* at pp. 103-104.

⁶² When a member of the service is suspended, he or she loses the income and any employment benefits during that time. Also, the period of suspension is excluded from the member of the service's tenure of employment. Finally, the member of the service's firearm is also removed during the suspension.

⁶³ This case is discussed *infra* at pp. 86-87.

⁶⁴ Although the Commission considered the most serious charge to be that the captain made false or misleading statements in an official Department interview, it characterized the case as a DWI/Unfit for Duty case because the Department imposes, at a minimum, dismissal probation in the addition to forfeiture of vacation or suspension days for the offense of Driving While Intoxicated. In this case, the captain was charged with driving a vehicle while he was unfit for duty. The captain was also charged with using his Department vehicle for personal reasons without permission on multiple occasions.

While this sample size was also too small to make definitive conclusions, the penalties imposed seemed to be consistent with penalties imposed on lower-ranking officers for similar misconduct. One challenge the Commission faces in evaluating whether higher-ranking officers receive preferential treatment is that it only reviews those disciplinary cases that are initiated with formal charges and specifications. It is impossible to know whether higher-ranking members of the service are being disciplined similarly to other officers without reviewing cases that are resolved with less serious sanctions, such as command disciplines, letters of instructions, and voluntary retirement in lieu of charges. The Commission is exploring ways in which it could review misconduct that is not addressed through charges and specifications in the Department's formal disciplinary system.

The Commission found it significant, though, that of the first five cases involving higher-ranking officers that were adjudicated during the first review period, it only agreed with the penalties in two: the performance of duties case and the excessive force case involving a penalty of 25 vacation days, which was prosecuted by APU. As explained later,⁶⁵ the Commission generally refrains from commenting on the discipline imposed in APU cases. The penalty in this particular case was higher, though, than most cases involving excessive force. In the remaining three cases from this time period, the Commission believed that greater penalties should have been imposed. In the five cases that were adjudicated during the second review period, the Commission did not take issue with the penalties beyond its frequent criticism that members of the service found to have made false statements in official Department interviews should be terminated absent the finding of specific, enumerated exceptional circumstances.

⁶⁵ See *infra* at p. 65-66.

4. Timeliness

The Department benefits from timely corrective action to address unsatisfactory behavior.⁶⁶ Timely adjudication of administrative cases instills confidence in the disciplinary process.

For members of the service, a quick resolution of a disciplinary case eases the stress of potential discipline and the effect it may have on future assignments, promotions, and in some instances, employment with the Department. Swift resolution of a complaint also demonstrates to the public that the Department can effectively address police misconduct.

The Department must administratively charge a member of the service within 18 months of the date the misconduct takes place.⁶⁷ There is no limitation on the length of time taken to adjudicate administrative charges. In a typical DAO case, disciplinary proceedings are completed at least one and a half to two years after the misconduct occurred.

For this Report, the Commission analyzed a sample of 270 disciplinary cases from the first review period, to determine the average time elapsed from the date of an incident until the final decision of a disciplinary matter.⁶⁸ For that sample, the average investigative period (the date of incident until the date of charges) was 8.74 months. This is significant because it falls well below the statutory limit of 18 months. The average adjudication period (the date of charges to the date of final disposition) was 14.13 months. Overall, the average disciplinary case in this sample took 23.25 months from the date of the incident until final adjudication. The table

⁶⁶ See Office of Community Oriented Policing, U.S. Department of Justice. (2009). *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice*. Washington, D.C.: U.S. Department of Justice at pp. 33-34.

⁶⁷ N.Y. Civil Service Law § 75(4). The statute of limitations does not apply in cases where the alleged misconduct would constitute a crime if proven during a criminal proceeding.

⁶⁸ The Commission limited the samples from both review periods to single cases against a member of the service and cases with a single date of incident. Cases disposed of by the filing of charges were removed as well.

below depicts the elapsed time (in months) of the sample cases, and further breaks them down by adjudication type, and by prosecuting entity.

| Disciplinary Cases | | | |
|---------------------------|-----------------------------|----------------------------|----------------|
| Cases | Investigative Period | Adjudication Period | Overall |
| All (270) | 8.74 | 14.13 | 23.25 |
| Plea (170) | 7.47 | 12.69 | 20.54 |
| Mitigation (6) | 8.67 | 16.33 | 25.83 |
| Trial (94) | 11.05 | 16.6 | 28.02 |
| DAO Only (173) | 7.21 | 12.08 | 19.67 |
| DAO Plea (142) | 6.63 | 11.17 | 18.16 |
| DAO Mitigation (6) | 8.67 | 16.33 | 25.83 |
| DAO Trial (25) | 10.16 | 16.24 | 26.8 |
| CCRB Only (97) | 11.49 | 17.79 | 29.68 |
| CCRB Plea (28) | 11.79 | 20.43 | 32.68 |
| CCRB Mitigation (0) | - | - | - |
| CCRB Trial (69) | 11.38 | 16.72 | 28.46 |

For the second review period, the Commission analyzed a sample of 243 disciplinary cases to determine the average time elapsed from the date of an incident until the conclusion of the disciplinary process.⁶⁹ While the average investigative period decreased to 7.56 months, the average adjudication period (the date of charges to the date of final disposition) was approximately the same at 14.61 months. Overall, the average disciplinary case in the second review period took 22.59 months from the date of the incident until final adjudication, slightly less time than the average length from the first review period.

The following table sets forth the average length of time elapsed (in months) by prosecuting agency and type of proceeding.

⁶⁹ Cases disposed of by a motion to dismiss were removed from the sample as well. Additionally, in a small number of cases the date of charges was not provided; therefore, those cases were also not included in the sample.

| Disciplinary Cases | | | |
|---------------------|----------------------|---------------------|---------|
| Cases | Investigative Period | Adjudication Period | Overall |
| All (243) | 7.56 | 14.61 | 22.59 |
| Plea (180) | 6.95 | 14.17 | 21.51 |
| Mitigation (2) | 9 | 15 | 24.5 |
| Trial (61) | 9.31 | 15.92 | 25.75 |
| DAO Only (190) | 7.54 | 12.56 | 20.52 |
| DAO Plea (157) | 6.87 | 12.58 | 19.84 |
| DAO Mitigation (2) | 9 | 15 | 24.5 |
| DAO Trial (31) | 10.84 | 12.29 | 23.68 |
| CCRB Only (53) | 7.62 | 21.98 | 30.06 |
| CCRB Plea (23) | 7.48 | 25 | 32.87 |
| CCRB Mitigation (0) | — | — | — |
| CCRB Trial (30) | 7.73 | 19.67 | 27.9 |

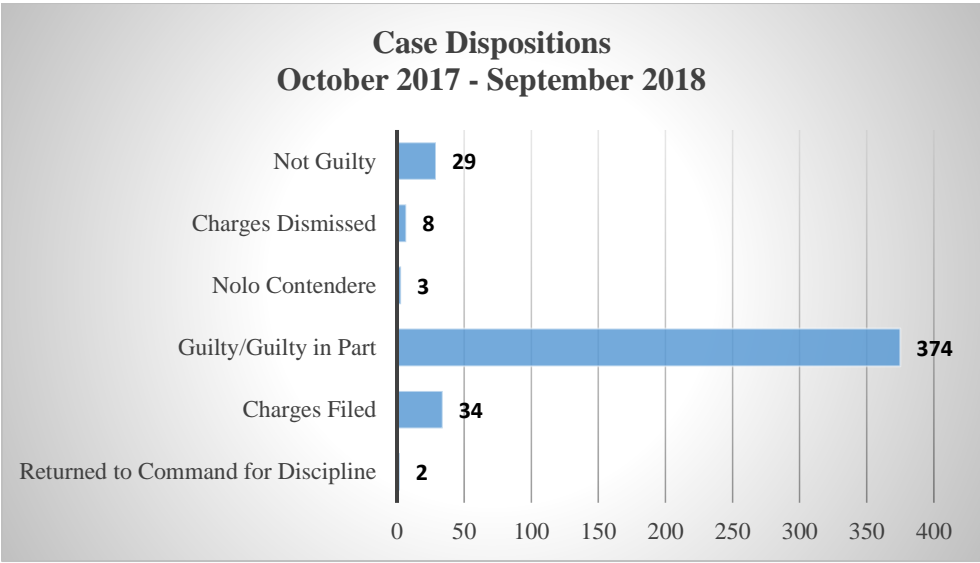
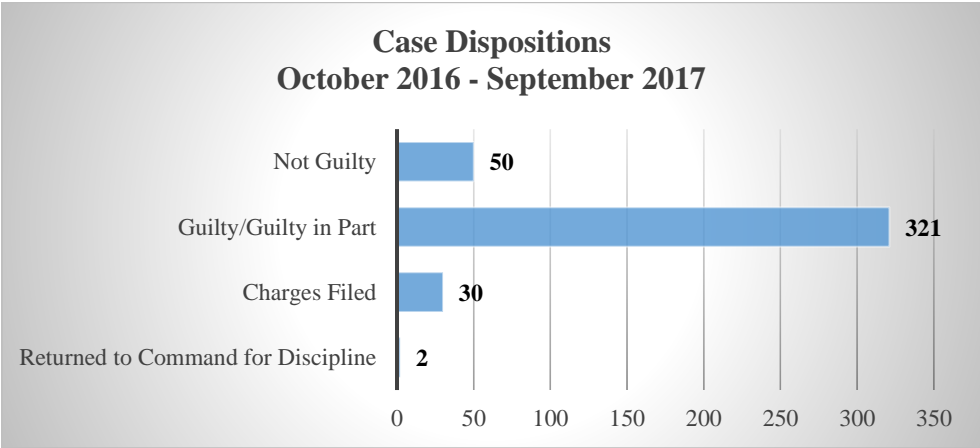
Also notable is the fact that the average length of CCRB investigations decreased by almost four months. However, the average adjudication period for CCRB cases increased by more than four months. Cases that were prosecuted by DAO that were resolved through trial were also resolved more quickly in the second review period.

5. Case Outcomes

a. Dispositions

Of the 404 members of the service facing discipline during the first review period, 321 (79.5%) were found (or pled) guilty to at least one specification against them. The charts on the next page depict dispositions for each member of the service:⁷⁰

⁷⁰ These dispositions reflect case outcomes for individual members of the service; as noted above, there were members of the service with multiple cases. A “Not Guilty” disposition would only come at the conclusion of a Department trial. The Guilty/Guilty in Part category includes those officers with multiple cases found not guilty of some charges, or who had charges dismissed, and were found guilty of other charges. One case is not included because the Police Commissioner rejected the plea agreement and ordered that the case be presented in the Department’s trial rooms. That trial was not concluded within the reporting period.



The tables below and on the next page depict dispositions by case type for each review period.⁷¹

| DAO Dispositions by Case Type October 2016 - September 2017 | | | | | |
|--|-------------------|-----------------------------------|--------------------------|--------------------------------|--------------|
| Case Type | Not Guilty | Guilty/ Guilty in Part | Charges Filed | Returned to Command | Total |
| Bribery/Gratuities | – | – | – | – | 0 |
| Computer Misuse | – | 3 | – | – | 3 |
| Criminal Association | – | 1 | 1 | – | 2 |
| Domestic Incident | 1 | 23 | 2 | 1 | 27 |
| DWI/Unfit for Duty | – | 14 | 3 | – | 17 |
| FADO | 46 | 73 | 3 | – | 122 |
| Failed to Report Misconduct/Corruption | – | 4 | 1 | – | 5 |
| Firearms | – | 30 | 3 | – | 33 |
| Harassment/Improper Contact | – | 6 | – | – | 6 |
| Insubordination | – | 14 | 2 | 1 | 17 |
| Minor Rules Violation | – | 10 | – | – | 10 |
| Narcotics | – | 1 | 4 | – | 5 |
| Performance of Duties | 2 | 59 | – | – | 61 |
| Perjury/False Statements | 1 | 39 | 3 | – | 43 |
| Property | – | 3 | – | – | 3 |
| Tow/Body Shop | – | – | – | – | 0 |
| Unlawful Conduct | – | 22 | 8 | – | 30 |
| Miscellaneous | – | 19 | – | – | 19 |
| Total | 50 | 321 | 30 | 2 | 403 |

⁷¹ One case in the Harassment/Improper Contact category is not included here as the Police Commissioner rejected a plea agreement and ordered that the case be presented in the Department's trial room. That trial was not concluded within the reporting period.

| DAO Dispositions by Case Type October 2017 - September 2018 | | | | | | | |
|---|-------------------|------------|------------------------|------------------------|---------------|---------------------|------------|
| Case Type | Charges Dismissed | Not Guilty | <i>Nolo Contendere</i> | Guilty/ Guilty in Part | Charges Filed | Returned to Command | Total |
| Bribery/Gratuities | – | – | – | – | 1 | – | 1 |
| Computer Misuse | – | – | – | 6 | – | – | 6 |
| Criminal Association | – | 1 | – | 8 | – | – | 9 |
| Domestic Incident | – | 1 | – | 20 | 1 | – | 22 |
| DWI/Unfit for Duty | – | – | – | 40 | 2 | – | 42 |
| FADO | 6 | 22 | 3 | 51 | 1 | 1 | 84 |
| Failed to Report Misconduct/ Corruption | – | – | – | 7 | – | – | 7 |
| Firearms | – | – | – | 31 | – | – | 31 |
| Harassment/ Improper Contact | – | – | – | 10 | 1 | – | 11 |
| Insubordination | – | 1 | – | 15 | 4 | – | 20 |
| Minor Rules Violation | – | – | – | 4 | – | 1 | 5 |
| Narcotics | – | – | – | 8 | 10 | – | 18 |
| Performance of Duties | 2 | 2 | – | 67 | 1 | – | 72 |
| Perjury/False Statements | – | 2 | – | 50 | 9 | – | 61 |
| Property | – | – | – | 6 | – | – | 6 |
| Tow/Body Shop | – | – | – | – | – | – | 0 |
| Unlawful Conduct | – | – | – | 28 | 2 | – | 30 |
| Miscellaneous | – | – | – | 23 | 2 | – | 25 |
| Total | 8 | 29 | 3 | 374 | 34 | 2 | 450 |

The greatest change between the two review periods was that the percentage of members of the service who were either found not guilty after a trial or whose charges were dismissed prior to a trial decreased during the second review period by approximately 25%. Some of the decrease in Not Guilty/Charges Dismissed cases can be attributable to the FADO category.

While 38% of the members of the service facing discipline for FADO charges were found not guilty in the first review period, 33% of members of the service facing these charges did not receive any discipline in the second review period. Despite this overall decrease in the second review period, there was a decrease in trials and more negotiations between January and September 2018 than in the final quarter of 2017. There was also an increase in guilty findings and more significant penalties imposed during the first nine months of 2018.

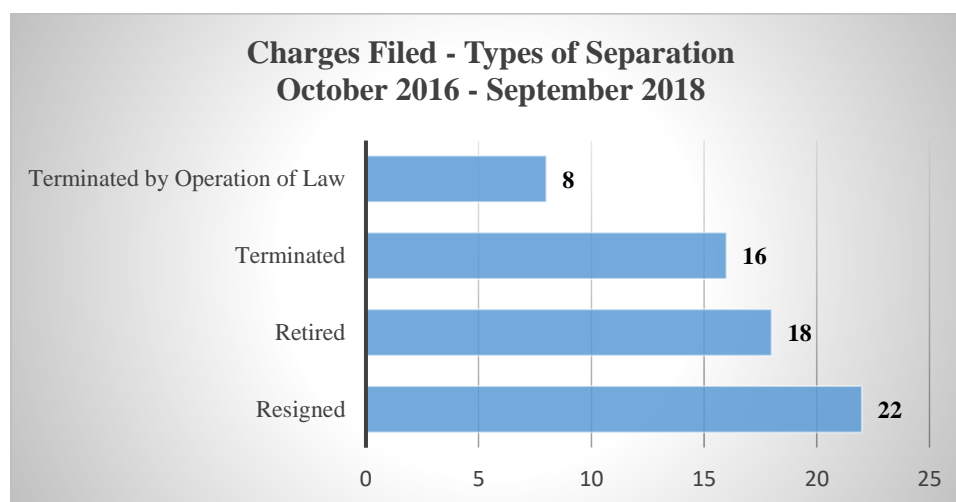
While the case categories of Criminal Association, Domestic Incidents, Insubordination, Performance of Duties, and Perjury/False Statements had increases in the percentage of officers who were found not guilty or whose charges were dismissed, these percentages, while themselves at times were significant, actually only consisted of a difference of one or two cases.

b. Charges Filed

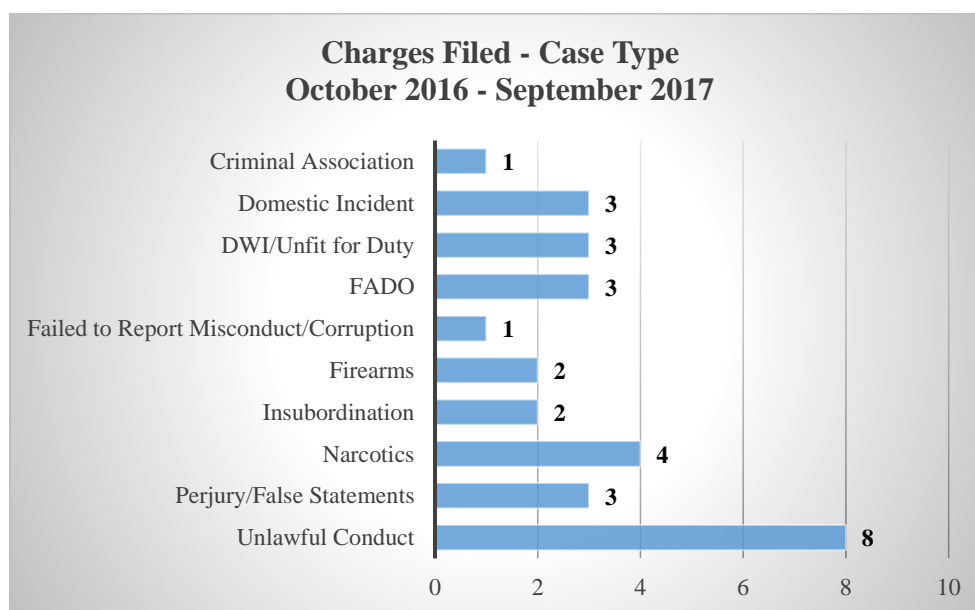
During the first review period, 30 members of the service had 32 cases disposed of as “charges filed,”⁷² while for the second review period 34 members of the service had 52 cases in which there was no discipline imposed because their charges were filed. For both review periods, this outcome accounted for approximately 7.5% of the members of the service with adjudicated cases. These members of the service separated from the Department while their investigations or disciplinary cases were pending. The separations were through termination, resignation, retirement, or termination by operation of law.⁷³ The chart on the following page reflects the type of separation for members of the service whose disciplinary cases were closed as “charges filed.”

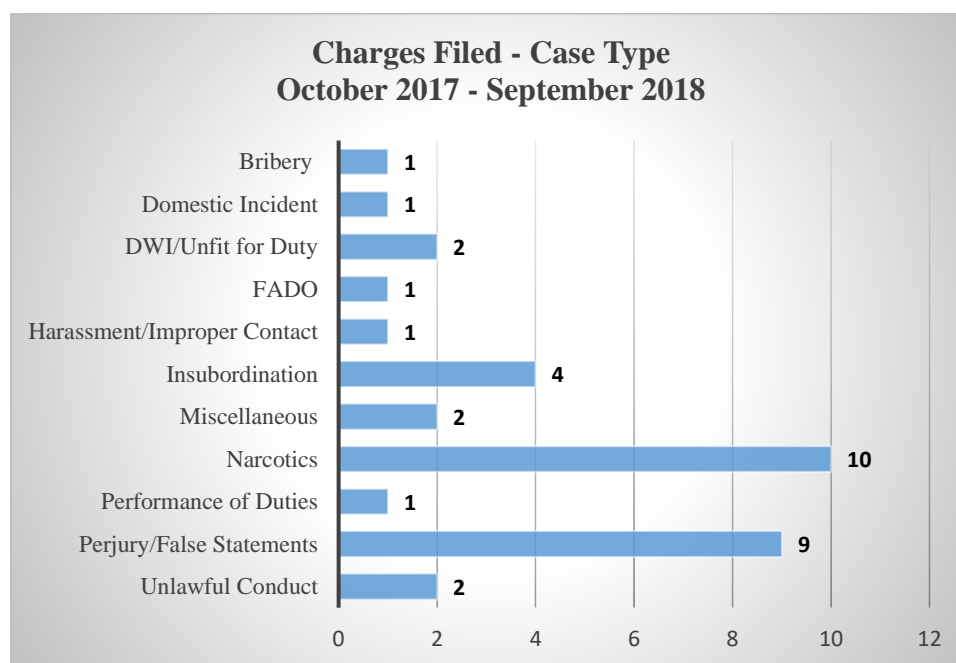
⁷² Two members of the service each had two cases.

⁷³ See *infra* at p. 56 for an explanation regarding termination by operation of law.



The following charts depict the case type assigned by the Commission for each case which was disposed of as charges filed for each review period.





c. Terminated by Operation of Law

Members of the service are terminated from the Department by operation of law upon conviction of a felony or a crime involving a violation of the officer's oath of office.⁷⁴

Terminations by operation of law are exercised separately from the Department's disciplinary process. As a result, any pending disciplinary cases are typically disposed of with the filing of charges. For this reporting period, eight members of the service were terminated by operation of law after being convicted of the following criminal charges:

- *Officer #1*: Conspiracy to Distribute Narcotics and Possession of Firearms.
- *Officer #2*: Criminally Negligent Homicide, Leaving the Scene of an Incident without Reporting (Personal Injury), and Operating a Motor Vehicle while Under the Influence of Alcohol or Drugs.

⁷⁴ N.Y. Public Officer's Law § 30(1) (e). Usually, a violation of an oath of office stems from a conviction for Official Misconduct. Many crimes are not considered to violate an oath of office, such as Petit Larceny, Assault in the Third Degree, and Driving Under the Influence of an Intoxicant. Criminal convictions for these misdemeanors would not result in an officer's automatic termination. Officers convicted of these offenses are disciplined through the Department's disciplinary system and, in many cases, are able to retain their employment.

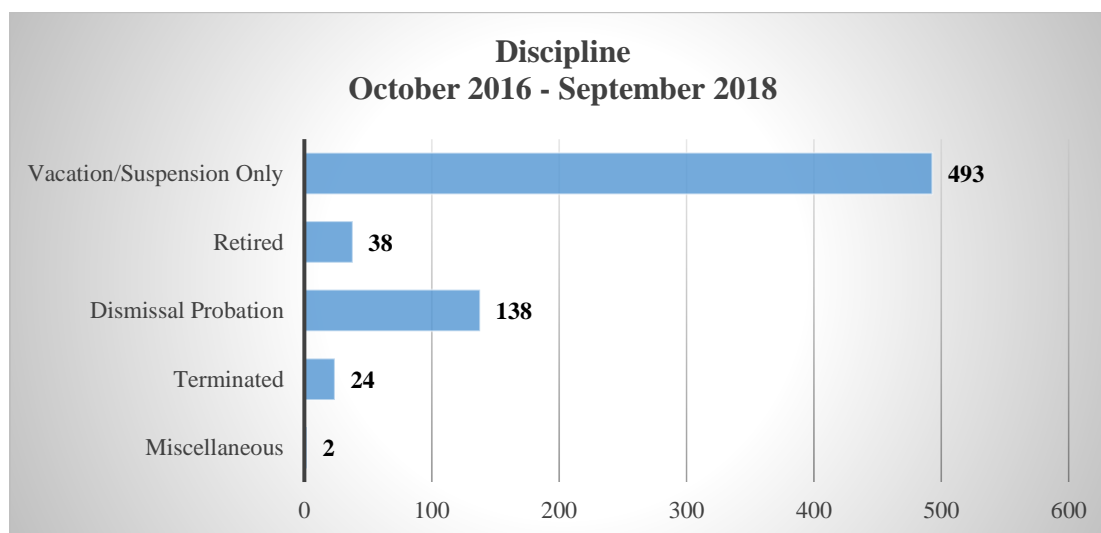
- *Officer #3*: Leaving the Scene of an Incident Resulting in Death.
- *Officer #4*: Offering a False Instrument for Filing in the First Degree, Making a Punishable False Written Statement, and Official Misconduct.
- *Officer #5*: Perjury (two counts), Making a Punishable False Written Statement, and Official Misconduct (three counts).
- *Officer #6*: Criminal Possession of a Controlled Substance, Bribe Receiving, and Petit Larceny.
- *Officer #7*: Perjury, Criminal Possession of a Forged Instrument, and Offering a False Instrument for Filing.
- *Officer #8*: Criminal Possession of a Controlled Substance (two counts) and Official Misconduct (four counts).

Approximately 1% of the officers who received discipline during the reporting period were terminated by operation of law. This was almost twice the percentage of officers (0.5%) who were terminated by operation of law during the 23 months covered by the *Eighteenth Annual Report*. It was also more than the percentage of officers (0.6%) separated in this manner during the time period covered by the *Seventeenth Annual Report*. The Commission does not know the reasons underlying this increase or whether it is significant. However, the Commission will continue to monitor the number of officers terminated by operation of law and try to analyze the reasons for any large changes in that number.

d. Penalties

Six hundred and ninety-five members of the service received discipline through the Department's formal disciplinary process during the entire reporting period. The discipline ranged from a reprimand to termination.

The chart below reflects the penalties imposed during the entire reporting period.⁷⁵



1) Separations via Discipline

During the first review period, 23 members of the service were separated from the Department as a result of the disciplinary process. This represents 5.7% of the officers whose disciplinary cases were adjudicated.⁷⁶ Of those, ten members of the service accepted some form of retirement⁷⁷ and thirteen members of the service were terminated. More members of the service faced separation from the Department during the second review period. Twenty-eight members of the service retired as part of a negotiated settlement, and eleven were terminated outright. This represented 8.7% of the officers whose disciplinary cases were adjudicated during the latter review

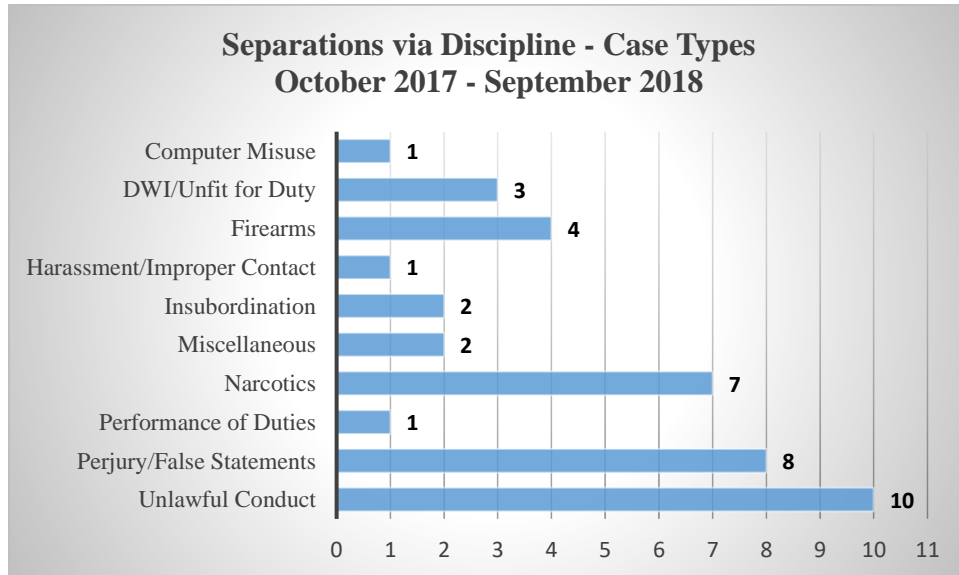
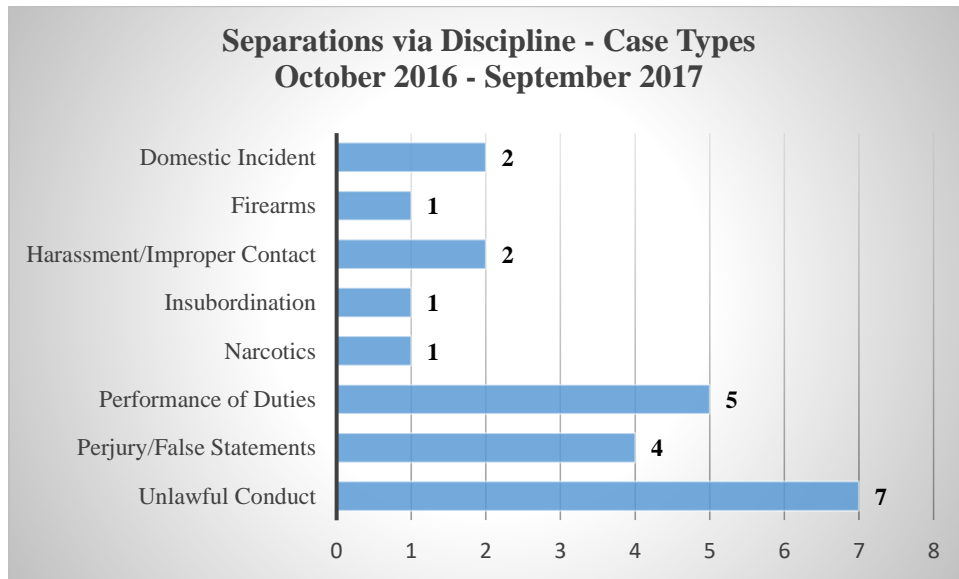
⁷⁵ The 141 officers who were placed on dismissal probation also forfeited vacation days and/or suspension days. The 38 officers who retired were also placed on dismissal probation to cover the time between the adjudication and the effective date of retirement and may have also forfeited penalty days. As noted above, officers with multiple disciplinary cases typically have the cases adjudicated at the same time with the penalty imposed covering all of the cases. In both review periods, the miscellaneous category consisted of a single reprimand.

⁷⁶ This compares to 5.6% for the *Eighteenth Annual Report* and 3.7% for the *Seventeenth Annual Report*.

⁷⁷ A forced retirement is not an option under the N.Y.C. Administrative Code; however, retirement can be included in a negotiated settlement as part of the penalty. Retirement can either be a service retirement when the officer has completed 20 years of service, entitling the officer to receive his or her full pension benefits, or a vested retirement. A vested retirement occurs when the officer has not attained 20 years of service, and only entitles the officer to collect partial benefits.

period.

The case types for these members of the service who were separated from the Department are detailed in the charts below.⁷⁸



⁷⁸ Categories with no cases were not included in the charts.

The number of officers with cases in the Perjury/False Statements category who were separated doubled during the second review period. There were also significant increases in separations for officers with cases in the Narcotics and DWI/Unfit for Duty categories. There was an 80% decrease in the officers who were separated in connection with charges in the Performance of Duty category.

2) Terminations

The Department terminated 24 members of the service (2.8% of members of the service facing discipline) during both review periods.⁷⁹ Because terminations are particularly significant, brief descriptions of those cases that resulted in outright terminations are included on the following pages:

- *Officer #1* had two cases involving separate domestic incidents. In the first, the subject officer was involved in a physical altercation with an intimate partner, broke the partner's cellphone, threatened the partner with a firearm, and prevented the partner from leaving a location. The second case involved an incident that occurred eight months later. In that case, the subject officer damaged personal property belonging to an intimate partner and threatened physical harm. (Both cases were included in the Domestic Incident case category.)
- *Officer #2* had two cases involving separate domestic incidents. In the first, the subject officer threatened to kill an intimate partner and the partner's child, videotaped the partner engaging in a sex act without consent, and posted nude photos of the partner online without consent. The second case stemmed from an incident that occurred less than a month later. The subject officer violated an order of protection while attempting to enter the partner's home. (Both cases were included in the Domestic Incident case category.)
- *Officer #3* asked to see and touch the breasts of a female who was in custody, sent sexually explicit text messages to the same female, and associated with a person reasonably believed to have engaged in criminal activity. This subject officer also had a second case involving misclassification of a crime report. (The first case was included in the Harassment/Improper Contact case category. The second was categorized as Performance of Duties. The overall case type was Harassment/Improper Contact.)

⁷⁹ This compares to 2.4% of the subject officers for the *Eighteenth Annual Report* and 0.4% for the *Seventeenth Annual Report*.

- *Officer #4* used his position of authority to gain access to a non-public domestic violence shelter, engaged in an intimate relationship with the subject of a previous emotionally disturbed person assignment, engaged in sexual conduct while on duty, and took a meal period at an unauthorized location. (This case was categorized as Harassment/Improper Contact.)
- *Officer #5* tested positive for cocaine use during a random drug test. (This was included in the Narcotics case category.)
- *Officer #6*, while off duty, joined others pursuing a vehicle during a motorcycle rally resulting in an assault of the vehicle's operator, failed to take police action during the assault, failed to notify IAB of misconduct, covered the license plate of the motorcycle he operated, failed to obey traffic signals while operating his motorcycle, and gave false and misleading statements to prosecutors. (This case was included in the Perjury/False Statement case category. A second case involving DWI was disposed of as charges filed.)
- *Officer #7* made false allegations of misconduct against another member of the service to IAB. (This case was included in the Perjury/False Statement category.)
- *Officer #8* stole money during a buy and bust operation, gave false statements during two official Department interviews, and failed to safeguard six activity logs. (This case was included in the Unlawful Conduct category.)
- *Officer #9* collected over \$40,000 from various individuals for a group trip and then stole the money without arranging the travel. (This case was included in the Unlawful Conduct case category. This officer also had a second case, involving similar misconduct, in which charges were filed.)
- *Officer #10* stole \$20 during an integrity test and then made false and misleading statements during an official Department interview. (This case was categorized as Unlawful Conduct.)
- *Officer #11* stole a debit card turned in during an integrity test and then used the card to make purchases. In a separate incident, the member of the service made a false fraud claim to a credit card issuer. (This was an Unlawful Conduct case.)
- *Officer #12* pointed a firearm at another motorist during a traffic dispute, threatened to kill him, and then struck the motorist with the firearm. (This was an Unlawful Conduct case. This officer also had a second case involving the failure to safeguard property. Both cases were resolved with the subject officer's termination, and the overall case category was Unlawful Conduct.)

- *Officer #13* got into an argument with a mechanic over a repair bill, punched the mechanic in the face causing injury, and left the scene without contacting the Department. (This was categorized as an Unlawful Conduct case.)
- *Officer #14* tested positive for marijuana during a random drug test. (This was included in the Narcotics case category.)
- *Officer #15* tested positive for cocaine during a random drug test. (This was included in the Narcotics case category.)
- *Officer #16* refused to comply with an order to answer questions during an official Department interview by IAB. This interview was part of an investigation into allegations that the officer was stealing supplies from his command. (This case was categorized as Insubordination.)
- *Officer #17* discharged his off-duty firearm during a physical altercation, striking the victim, failed to immediately identify himself as a member of service to responding law enforcement officers, made misleading statements to members of the local law enforcement, and made false and misleading statements to Department investigators. (This was a Firearms case. This officer also had a second case involving unauthorized off-duty employment. Both cases were resolved with the subject officer's termination, and the overall case category was Firearms.)
- *Officer #18* failed to comply with an order to answer questions during an official Department interview by IAB. This interview was part of an investigation into allegations of failure to notify a supervisor, discourtesy, force, and a disputed summons. (This was included in the Insubordination category.)
- *Officer #19* became involved in a civil matter and pointed his firearm at a civilian, displayed his NYPD identification, and threatened to close down the civilian's place of business. The officer also seized another person's property without permission and made false and misleading statements during his official Department interview that was part of the investigation into this conduct. (This case was categorized as a Firearms case.)
- *Officer #20* induced a minor to engage in a sexual performance and attempted to dissuade that minor from testifying against him. He also engaged in computer misuse and made misleading statements during an official Department interview conducted by IAB into his relationship with the minor and the video recordings that were made of the minor. (This case was included in the Unlawful Conduct category.)
- *Officer #21* tested positive for amphetamines during a random drug test. (This case was categorized as Narcotics.)

- *Officer #22* sexually abused his teenage child. (This case was included in the Unlawful Conduct Category.)
- *Officer #23* tested positive for amphetamines during a random drug test. (This case was included in the Narcotics category.)
- *Officer #24* physically assaulted a seventeen-year-old female and made both false and misleading statements when questioned about the incident during an official Department interview. (This was an Unlawful Conduct case.)

3) Dismissal Probation

A member of the service placed on dismissal probation is nominally considered dismissed from the Department, but dismissal is held in abeyance for one year.⁸⁰ During this period, the member of the service continues to be employed by the Department; however, should he or she engage in any further misconduct, the Department has the discretion to terminate his or her employment without any further hearings.⁸¹ At the successful conclusion of the dismissal probation period, the member of the service is restored to his or her former status.

During the first review period, 46 members of the service were placed on dismissal probation.⁸² This represents 14.33% of the officers who were found guilty or pled guilty to at least one charge. This is a significant decrease from the percentage of officers placed on

⁸⁰ Only the time the officer is on full-duty is included in this year-long period.

⁸¹ The Department has a central monitoring unit that receives regular reports on officers who are placed in one of its programs based on concerns about their behavior or performance. These monitoring programs range from Level I to Level III, with III being the most highly monitored. The programs are also categorized based on whether the officer's issues involve force-related misconduct, performance issues, or disciplinary issues. Dismissal Probation is one of two Level III monitoring programs. For further information about these monitoring programs and the Performance Monitoring Unit, *see* the Commission's reports, "*The New York City Police Department's Non-IAB Proactive Integrity Programs*" (December 2001) and "*A Follow-Up Review of the New York City Police Department's Performance Monitoring Unit*" (April 2006).

⁸² These 46 members of the service accounted for 50 cases. Nine other members of the service received dismissal probation but separated from the Department via retirement as part of their negotiated penalty.

dismissal probation in the cases reviewed by the Commission for its last two annual reports.⁸³

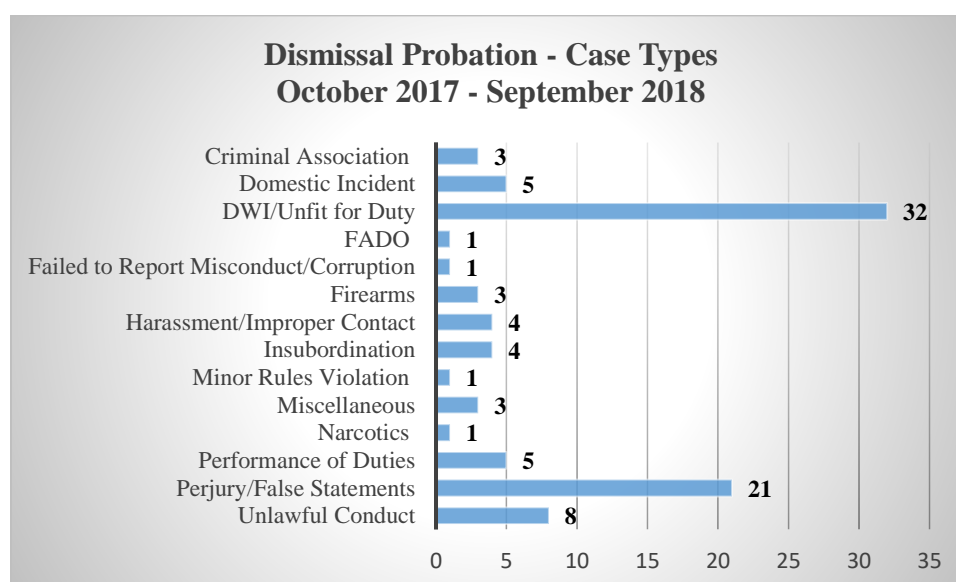
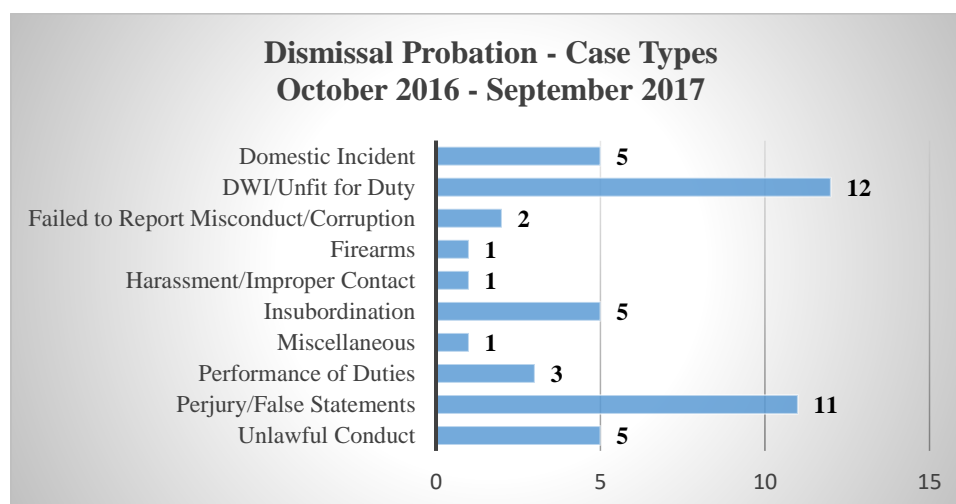
One possible reason for the decrease in officers placed on dismissal probation may be that the Department has adjudicated the cases against all of those members of the service who were involved in the ticket-fixing investigation from several years ago.⁸⁴ However, during the second review period, 92 members of the service, or approximately 25% of officers who received discipline during this period, were placed on dismissal probation. While increases in the imposition of dismissal probation were observed in all of the case categories except Insubordination, Failure to Report Misconduct or Corruption, and Domestic Incidents, the majority of the increase appeared to correspond with the increase in officers found guilty of DWI, a charge that has a standard penalty that includes dismissal probation. There was also a significant increase in officers placed on dismissal probation who were found guilty of cases in the Perjury/False Statement category.

The charts on the next page depict the case types that resulted in dismissal probation.⁸⁵

⁸³ In both of those reports, 21% of officers with a guilty (or *nolo contendere*) finding were placed on dismissal probation (*Eighteenth Annual Report* at p. 53 and *Seventeenth Annual Report* at p. 51.)

⁸⁴ See *Fifteenth Annual Report of the Commission* (“*Fifteenth Annual Report*”) (September 2013) at pp. 76-77 for a more in-depth discussion about the ticket-fixing investigation and disciplinary cases.

⁸⁵ The case type categories reflect the most serious charge in each particular disciplinary case. For the four members of the service with multiple cases, the Commission used the most serious allegation to determine an overall case type.



C. CCPC Analysis of Disciplinary Case Penalties

Overall, the Commission agreed with the penalty imposed in 89% of the disciplinary cases involving uniformed members of the service that were adjudicated between October 2016 and September 2017. The chart on the following page shows the rate at which the Commission agreed with the penalty for each of the disciplinary case categories. It should be noted that one reason for the decrease in penalty agreement for this Report is that the Commission did not include the many cases prosecuted by the Administrative Prosecution Unit (APU) of the Civilian Complaint Review Board (CCRB) in determining its agreement rate this year. Typically many

more FADO cases are prosecuted by APU and as both the investigation and prosecution of these cases are conducted by an agency outside of the Department, the Commission defers to the recommendations of APU. Counting this deferral as agreement seemed misleading, however, especially because the Commission thought that many of these APU-prosecuted cases may have deserved higher penalties than those imposed.

Accordingly, for this time period, only the 15 DAO-prosecuted cases are included in our assessment of the agreement rate this year.

| Case Type | CCPC Agreed | Number of Cases |
|--|-------------|-----------------|
| Bribery/Gratuities | - | 0 |
| Computer Misuse | 67% | 2/3 |
| Criminal Association | 100% | 2/2 |
| Domestic Incident | 59% | 16/27 |
| DWI/Unfit for Duty | 100% | 17/17 |
| FADO prosecuted by DAO | 67% | 10/15 |
| Failure to Report Misconduct/Corruption | 80% | 4/5 |
| Firearms | 97% | 32/33 |
| Harassment/Improper Contact | 57% | 4/7 |
| Insubordination | 100% | 17/17 |
| Minor Rules Violation | 100% | 10/10 |
| Miscellaneous | 79% | 15/19 |
| Narcotics | 100% | 5/5 |
| Performance of Duties | 89% | 54/61 |
| Perjury/False Statements | 74% | 32/43 |
| Property | 100% | 3/3 |
| Tow/Body Shop | - | 0 |
| Unlawful Conduct | 97% | 29/30 |

The Commission disagreed with the penalties imposed on 45 subject officers due to the seriousness of the incident(s) or the subject officer's poor disciplinary and/or performance history. For 31 subject officers, the Commission believed that dismissal probation should have been included in the penalty. For 11 subject officers, the Commission believed that termination of the officer's employment (or separation through other means) was the only appropriate

penalty. Finally, in three cases, the Commission believed that the subject officer should have forfeited more vacation or suspension days due to the seriousness of the misconduct, but did not believe that dismissal probation was necessary because it seemed unlikely that the subject officer would repeat the misconduct. In prior annual reports, the Commission has generally limited its focus to the question of whether dismissal probation or separation should have been part of the imposed penalty, without attempting to identify a specific number of penalty days that would be optimal. In this Annual Report, while continuing to focus on the most serious penalties levied, the Commission has included observations on penalty days imposed in certain categories.

In the following sections, the Commission discusses each case category. These sections include a comparison with the number of cases in the same or equivalent categories in prior years. The Commission also comments on the “standard” penalty for each case category and indicates factors it believes should result in an increased penalty. If the Commission disagreed with any penalties imposed in the cases in the particular category, an example case with the Commission’s reasons for disagreement is also included.

1. Bribery/Gratuities

This category most closely corresponds to the category of Profit-Motivated Misconduct from the Commission’s two prior annual reports. Due to the importance of bribery/gratuities historically in efforts to combat corruption, the Commission has chosen to carve out this category from the broader Profit-Motivated Misconduct grouping. Between October 2016 and September 2017, there were no cases in this category, although an acceptance of gratuities allegation was included in a Performance of Duties case.

2. Computer Misuse

In the Commission's prior two reports, there was no separate category for computer misuse. Instead, that allegation was included under Administrative Misconduct. As specifications for computer misuse usually do not occur alone but rather alongside specifications for criminal association and/or disclosing confidential information, the three subject officers who had cases classified as computer misuse are only a subset of the total number with specifications charging this misconduct. In fact, there were ten subject officers charged with misusing Department computer systems during the relevant time period. The Commission believes that it is important to track this particular charge. The misuse of Department databases can lead to significant invasions of privacy and therefore, can be a serious abuse of an officer's authority. The ease with which an officer can access this information increases the temptation to gather personal information improperly about citizens, which can then be used or disclosed to others.

Penalties for cases in which the most serious charge concerned computer misuse ranged from ten to fifteen vacation days, with a loss of fifteen vacation days being the most commonly imposed penalty.⁸⁶ This specification involved the use of Department databases for non-Department purposes and included accessing Department arrest paperwork, DMV databases, and warrant databases for personal reasons.

The Commission agreed with the penalties imposed in two of the cases in the Computer Misuse category but disagreed with the penalty against one officer, which covered two separate cases. This subject officer had unauthorized off-duty employment that was the misconduct charged in the first disciplinary case. The misconduct in the second disciplinary case arose while

⁸⁶ Often when computer misuse is the sole substantiated allegation against a member of the service, the misconduct is addressed with a command discipline in lieu of charges and specifications. The Commission does not currently have access to the paperwork for command disciplines.

the subject officer was engaged in his off-duty employment, and involved conducting multiple computer inquiries on his tenant, who complained to the Department when he confronted her with information he had found. The subject officer pled guilty to two counts of using Department computers for non-Department or non-city purposes and additionally pled guilty to engaging in off-duty employment without authority or permission. He forfeited 15 vacation days to resolve both sets of charges against him. He was also transferred.

In justifying the penalty, the Assistant Advocate cited cases imposing ten-day penalties for unauthorized off-duty employment and ten-day penalties for computer misuse. Noting that the subject officer committed both forms of misconduct, the Assistant Advocate stated that there should be an increased penalty. However, in fact, the subject officer actually forfeited fewer vacation days than he would have forfeited had his two cases been adjudicated separately. The Commission believed that a greater penalty than the forfeiture of 15 vacation days was warranted. Multiple unauthorized inquiries should result in enhanced penalties, as should inquiries conducted for personal financial gain.

3. Criminal Association

Another new stand-alone category, Criminal Association cases were previously included in the category of Other Off-Duty Misconduct. Because of the prevalence and the serious nature of this type of allegation, the Commission has determined to treat this henceforth as a separate category. These cases typically involve intimate relationships between members of the service and civilians who were involved in the possession or sale of drugs and/or civilians with a criminal history.

The Commission reviewed two cases with criminal association as the most serious charge. In one case, the Department terminated the subject officer prior to adjudication of the criminal association case. In the other case, the subject officer forfeited 45 vacation days as a penalty. The Commission agreed with these penalties.

4. Domestic Incidents

In past reports, the Commission has paid particular attention to cases involving domestic incidents: that is, cases in which the complainant and the subject officer were or had previously been involved in an intimate or familial relationship.⁸⁷ The Commission divides these cases into two subcategories: (1) domestic incidents involving a physical altercation; (2) domestic incidents in which no physical force was used against another person, but which could include damage or the threat of damage to property; harassment; threats of violence, including the display of a firearm; or violations of orders of protection.

a) Domestic Incidents Involving a Physical Altercation

In its *Sixteenth Annual Report*, the Commission recommended that the Department adopt a policy to govern the discipline imposed on members of the service who engaged in physical altercations in a domestic setting. The Commission suggested that for a first offense with no corresponding criminal conviction, the subject officer be placed on dismissal probation in addition to forfeiting the average 30 penalty days. In those instances in which a subject officer was criminally convicted for acts of domestic violence, or had previously been disciplined by the Department for engaging in acts of domestic violence, the Commission urged that a presumption in favor of termination of the officer's employment apply.⁸⁸ In its *Eighteenth Annual Report*, the

⁸⁷ This includes current or former spouses or intimate partners, children regardless of age, parents, siblings, and other family members, as well as the new partners of former significant others.

⁸⁸ See *Sixteenth Annual Report* at pp. 51-53.

Commission modified its policy recommendation to allow for less severe penalties when the Department faced issues affecting its ability to prosecute the administrative case successfully, the severity of force employed by a subject officer was minimal, or there were other circumstances that suggested a less significant penalty was appropriate.⁸⁹ These recommendations have since been endorsed by the Panel appointed by Commissioner O’Neill to conduct an analysis of the Department’s disciplinary system.⁹⁰

Between October 2016 and September 2017, there were 23 cases adjudicated in which the most serious charge involved an allegation of a physical altercation between parties with a domestic relationship. Among these cases, one subject officer was found not guilty, one case was sent to the subject officer’s command for adjudication, and two cases were disposed of as charges filed. In the remaining 19 cases, the penalties imposed ranged from a loss of 20 vacation days to termination.

The Department followed the Commission’s policy recommendations in five cases. The Commission believed greater penalties were merited in 10 of the remaining 14 cases. In nine of those ten cases, it was the first domestic incident for the subject officers, which in accordance with Commission policy recommendations, merited dismissal probation plus forfeiture of 30 days. In one such case, the subject officer had been with the NYPD for less than three years. During an argument with his live-in girlfriend, he threw her on the couch and punched her in the face with a closed fist, causing a cut to her lip. He was arrested and pled guilty in the disciplinary case to two specifications: 1) engaging in a physical altercation with his girlfriend and 2) failing to remain at the scene of the incident, request the response of the Patrol

⁸⁹ See *Eighteenth Annual Report* at p. 73.

⁹⁰ See *The Report of the Independent Panel on the Disciplinary System of the New York City Police Department* (January 25, 2019) at pp. 41-43 and 55.

Supervisor, or notify the Desk Officer. As a penalty, the subject officer forfeited the 30 days he was suspended following his arrest and was required to cooperate with counseling. The Commission believed that a period of monitoring in the form of dismissal probation was appropriate in addition to the 30 days forfeiture.

The Commission believed that one member of the service should have been terminated because of his disciplinary history. The subject was a sergeant with more than 16 years of employment. In 2010, after he received charges for a domestic incident involving a physical and verbal dispute with his girlfriend, he forfeited 15 vacation days, and had to cooperate with counseling. In the more recent incident, the victim was the mother of the sergeant's children. The sergeant entered her home and struck her in the head. He was arrested but the criminal case was dismissed when the victim failed to cooperate. He subsequently pled guilty to engaging in "conduct prejudicial to the good order, efficiency, or discipline of the Department" ("Conduct Prejudicial") for the physical altercation, but in his official Department interview, he denied being at the victim's residence for more than a few minutes and denied engaging in any altercation with her. He was placed on dismissal probation, forfeited the 36 suspension days he had served following his arrest, and was required to cooperate with counseling.

The Assistant Advocate noted that despite the victim's refusal to cooperate, there was sufficient evidence to prove the charge, and based on the sergeant's prior history, an increased penalty was warranted. The Commission believed that because of the prior disciplinary history, the apparently unprovoked nature of the assault, and the sergeant's denials and apparent lack of remorse, a penalty separating him from the Department was more appropriate.

b) Domestic Incidents that Did Not Involve a Physical Altercation

During this period, four officers faced charges for domestic incidents that did not involve a physical altercation and were found or pled guilty to this misconduct. Two cases involved the threat of assault, resulting in a 68-day suspension for one officer and termination for the other.⁹¹ One case involved inappropriate texts or social media postings resulting in the subject officer forfeiting fifteen vacation days. The Commission agreed with these penalties.

The Commission disagreed with one case, which involved a police officer with more than four years of service at the time of the incident. This was the first time he was the subject of formal discipline. During an argument with his estranged wife at her home, the officer smashed their cell phones and threw flowerpots through the front window. He was arrested and pled guilty to Disorderly Conduct, which resulted in a fine and an order of protection against him. The subject officer later pled guilty to three specifications, including two counts of Conduct Prejudicial and failure to promptly notify the Operations Unit of his involvement in an off-duty incident/unusual police occurrence. He forfeited the 30 days he had been suspended following his arrest. The Commission believed that a period of monitoring, through dismissal probation, should have been part of the penalty.

The Commission believes that a penalty consisting of the forfeiture of vacation or suspension days is generally reasonable in cases in which no physical force is used, but that aggravating factors should increase the penalty. These include the involvement of alcohol in the altercation, a past history of domestic incidents, violation of a court order, commission of any illegal acts (such as aggravated harassment, vandalism, or preventing contact with law enforcement). In the case of threats, the Commission views the nature and number of the threats

⁹¹ This officer also had a second case for violating an order of protection. The termination covered both cases.

as potential aggravating factors. Dismissal probation can be an appropriate part of the penalty when there are such aggravating factors present.

The Commission continues to recommend that, absent evidentiary issues, cases involving more than minor physical altercations should result in a penalty that includes dismissal probation. When there has been a prior history of physical domestic incidents, the Commission continues to advocate that the officer be separated from the Department.

5. DWI/Unfit for Duty

The Commission reviewed 17 cases within this category. These cases fell into the two general subcategories of DWI and Unfit for Duty.

a) DWI

This category involved officers who operated a moving vehicle while under the influence of an intoxicant. It included those instances in which the subject officer had a blood alcohol reading that was over the legal limit of 0.08%, as well as those in which intoxication was determined through common law indicia such as an odor of alcohol, bloodshot eyes, slurring of speech, and unsteadiness when standing.⁹² All officers who received charges for DWI also received charges for being unfit for duty.

The Department's standard penalty for a DWI finding during this time period was the imposition of dismissal probation, the forfeiture of approximately 30 penalty days,⁹³ submission to random quarterly breath-testing (which can result in summary termination if the officer receives a reading higher than 0.04%), and participation in all Department counseling programs

⁹² A person can still be guilty of the lesser offense of driving while ability is impaired with a blood alcohol content of less than 0.08%.

⁹³ Penalty days can refer to the forfeiture of vacation days or suspension days already served or period of suspension to be served, or any combination of these days.

deemed appropriate.⁹⁴ The Commission agrees that this penalty is sufficient in most DWI cases. However, the Commission recommends that higher penalties be imposed when aggravating factors exist. The most common aggravating factors include the officer's involvement in an accident, particularly one causing injuries to another person; leaving the scene of an accident, presumably to escape detection; refusing to submit to a breathalyzer or a similar test; being armed while unfit for duty; driving while intoxicated or impaired while on duty; and having previously been disciplined for alcohol-related misconduct. In past reports, this last factor has often resulted in the Commission noting that the officer should have been separated from the Department due to the future risk of injury to civilians and the possible financial liability of the City.⁹⁵

During this review period, the Commission reviewed 11 cases involving DWI. The penalties the Department imposed for DWI cases included dismissal probation and forfeiture of combined vacation and suspension days ranging from 32 to 50 days. The Commission agreed with the penalties in all the DWI cases.

b) Unfit for Duty

The Commission reviewed six cases in which the most serious charge was that the officer was unfit for duty. The penalties imposed by the Department ranged from 20 vacation days to dismissal probation and the loss of 20 vacation days and 30 days previously served on suspension. The most common penalty was dismissal probation and a loss of 30 days. While too small a sample to determine the Department's standard penalty, the Commission generally

⁹⁴ Since September 2017, the standard penalty for DWI has increased; currently, the penalty includes the forfeiture of approximately 60 vacation days, suspension days, or a combination of the two.

⁹⁵ See *Eighteenth Annual Report* at pp. 105-107 and *Twelfth Annual Report of the Commission* ("Twelfth Annual Report") (February 2010) at p. 68.

agreed with the penalties that did not include dismissal probation. However, the Commission believes greater penalties should be imposed in certain situations. These mirror the aggravating factors listed in the DWI section and include being unfit for duty while armed, being unfit for duty while on duty, failing to remain at the scene of an unusual police incident, or prior discipline for alcohol-related misconduct.

6. FADO

The Commission characterized 122 cases as FADO cases. One hundred and seven were prosecuted by APU and fifteen by DAO. The Commission divided all 122 FADO cases into subcategories relating to force, abuse of authority, discourtesy, and offensive language.

a) Force

The Commission reviewed 49 cases in which the most serious misconduct involved the unnecessary or excessive use of force or the unjustified threat of force. APU prosecuted 40 of those cases, and DAO prosecuted the other 9 cases. Penalties for this category overall ranged from 2 vacation days to 30 vacation days, with 15 vacation days being the most common penalty. When broken down by prosecuting agency, those force cases prosecuted by APU received penalties ranging from 2 to 25 vacation days, with 15 vacation days being the most common penalty given. Penalties imposed on officers prosecuted by DAO ranged from 5 to 30 vacation days, with 10 vacation days being the most common.

The Commission believes that certain aggravating factors should result in enhanced penalties including the severity of the force used, whether a firearm was unjustifiably displayed, the nature of any injuries sustained by the complainant, whether the complainant was handcuffed or otherwise restrained during the use of force, and whether the subject officer had a prior history of wrongfully using force.

The Commission disagreed with the penalties in four cases prosecuted by DAO. In one such case, an officer who had been on the force for three years responded to a complaint regarding residents fighting in a homeless shelter. He arrested and handcuffed two residents. One of them spat on the officer, who immediately struck her in the side of the face, causing her to fall to the ground and lose consciousness. The resident sustained two facial fractures. Three civilian witnesses described this strike as a punch, but when questioned by investigators, the subject officer denied punching the resident, stating that she lunged into his open hand. He also maintained that she did not lose consciousness until she fell to the ground and that her injuries were caused when she hit the ground. He pled guilty to improperly using excessive force upon a handcuffed prisoner and forfeited 30 vacation days.

DAO recommended a severe penalty because the subject officer's version of events was contradicted by a total of five witnesses and the injuries sustained by the resident were inconsistent with a fall.⁹⁶ The Assistant Advocate did not include dismissal probation as part of the recommended penalty because the officer's actions were impulsive, not pre-planned. Given all the facts, the Commission believed this officer should at least have been placed on dismissal probation in addition to losing vacation days; this would have allowed the Department to monitor his interactions with other civilians, and immediate disciplinary action could be taken if he engaged in any other misconduct.

b) Abuse of Authority

Abuse of authority encompasses a wide range of misconduct. The majority of these cases were prosecuted by APU and disposed of with penalties consisting of the forfeiture of fewer than

⁹⁶ It is unclear why the subject officer did not receive charges for making false statements during his official Department interview.

ten vacation days. A breakdown by broad categories of the most serious abuse of authority allegations is set forth below:

| Type of Case | Number of APU | Penalty Range | Most Common Penalty | Number of DAO | Penalty Range | Most Common Penalty |
|---|---------------|--------------------------|---------------------|---------------|------------------|---------------------|
| Improper/Disputed Arrest | 2 | Charges Filed | - | 1 | 10 Vacation Days | 10 Vacation Days |
| Damaged Property | 2 | Not Guilty | - | - | - | - |
| Improper search ⁹⁷ | 21 | 2-12 Vacation Days | 5 Vacation Days | 2 | 5 Vacation Days | 5 Vacation Days |
| Improper/Forced Entry ⁹⁸ | 22 | 3-20 Vacation Days | 5 Vacation Days | 1 | Not Guilty | - |
| Improper Stop/Detention ⁹⁹ | 11 | Training-3 Vacation Days | 3 Vacation Days | 1 | 5 Vacation Days | 5 Vacation Days |
| Threaten Arrest or Police Action | 1 | 4 Vacation Days | 4 Vacation Days | - | - | - |
| Improper/Disputed Summons ¹⁰⁰ | 4 | 2-10 Vacation Days | 2 Vacation Days | - | - | - |
| Failed to Initiate or Record a Civilian Complaint | 1 | Not Guilty | - | - | - | - |
| Interfered with Civilian Recording of an Incident | 2 | Not Guilty | - | - | - | - |
| Other ¹⁰¹ | 3 | 10-18 Vacation Days | - | - | - | - |

As indicated above, all but five of these cases were prosecuted by APU. Of the penalties imposed on the five officers prosecuted by DAO, the Commission disagreed with the penalty in

⁹⁷ This included searches of people, cars, and premises. It also included frisks when they were the most serious allegation.

⁹⁸ This category included the authorization of an improper entry into premises by a supervisor.

⁹⁹ This category included the authorization of an improper stop or detention by a supervisor.

¹⁰⁰ This category included the authorization of an improper summons by a supervisor.

¹⁰¹ This category included authorizing a strip search without proper justification and ejecting a civilian from a subway without legal authority. Since the allegations were not equivalent, a most common penalty did not apply.

one case. In October 2014, while the subject officer and his partner were arresting a gang member, a friend of the gang member began filming the arrest and taunting the officers. Video showed that after placing the arrested gang member in the patrol car, the subject officer pushed the friend with both hands, adopted a fighting pose, and put on black gloves. The friend was arrested and charged with Assault, Menacing, and Resisting Arrest, but the charges were later dismissed. At the Department trial, the subject officer justified the arrest by explaining that he believed the friend's derogatory taunts to be a threat.

The officer was found guilty of 1) wrongfully leaving an arrestee unattended inside the backseat of a radio motor patrol vehicle, and 2) improperly arresting an individual without probable cause in that he arrested an onlooker who was making derogatory statements and videotaping the lawful arrest of another. The subject officer forfeited ten vacation days and was required to attend the Tactical Communications course at the Police Academy.

The Commission believed that this penalty was insufficient. As noted by the Trial Commissioner, it was unlikely that there was a substantive threat justifying arrest of the friend. Rather, the subject officer used his position as a police officer to punish someone whose behavior did not constitute a criminal offense.

At the time of the incident, the subject officer had been a member of the service for less than three years. Although this was his only disciplinary matter, after the incident, but prior to the final adjudication of the matter, he was placed on Level I Force Monitoring¹⁰² for receiving three or more CCRB complaints in one year.¹⁰³ He remained on that monitoring when this case was adjudicated. For all of these reasons, the officer should have been placed on dismissal

¹⁰² See *supra* at p. 63, fn. 81.

¹⁰³ The number of civilian complaints made against an officer, rather than the ultimate disposition of those complaints, determines whether an officer is placed on Force Monitoring.

probation so that his behavior during future arrests and the nature of his interactions with other civilians could be monitored, and immediate disciplinary action could be taken if he engaged in any other misconduct.

c) Discourtesy and Offensive Language

Of the four cases in which the most serious allegation involved discourtesy to a civilian or the use of offensive language in the presence of a civilian, APU prosecuted three and penalties ranged from the forfeiture of four to five vacation days, with five days being the most commonly imposed penalty. The lone case prosecuted by DAO resulted in a not guilty finding.

7. Failure to Report

This category of cases was included within the Duty Failure category in previous annual reports. The Commission has decided to separate these cases into their own category for this and future reports. Prompt reporting of complaints or suspicions allows investigators to commence their probes before readily evidence is lost. Consequently, the failure to notify the Department of a known allegation should be met with significant discipline. The Commission also included in this category allegations of officers failing to notify the Department about their own off-duty involvement in, or presence at, an “unusual police incident” as the same investigative concern is implicated.¹⁰⁴

Five cases fell into the category. The most serious allegations in all of these cases were the failure to report allegations of corruption or misconduct to IAB. In one case, no penalty was

¹⁰⁴ Patrol Guide §212-32 “Off Duty Incidents Involving Uniformed Members of the Service” requires off duty uniformed members of the service who are present at an unusual police occurrence either as a participant or witness to remain at the scene of the incident when their personal safety is not in jeopardy and request the response of the patrol supervisor from the precinct where the incident occurred. An unusual police occurrence is not defined except to note that it can include family disputes and other incidents of domestic violence. Often violation of this Patrol Guide section is included among the specifications in domestic incident cases. If the underlying domestic allegations are not substantiated, the subject officer can still be penalized for failing to make the necessary notifications.

imposed because charges were filed against the subject officer after he was no longer employed by the Department. Penalties in the remaining 4 cases ranged from the loss of 10 vacation days to dismissal probation plus a loss of 45 vacation and suspension days, with dismissal probation and a loss of 45 days imposed in 2 cases and the forfeiture of 25 and 10 vacation days, respectively, in the remaining 2 cases.

The Commission disagreed with the penalty in one case involving a lieutenant and two of his subordinates, both of whom were detectives. The three men met at a bar while they were off-duty to celebrate the lieutenant's promotion. After approximately two hours, one of the detectives left, prompting the lieutenant and other detective to look for him. Outside the bar, the lieutenant observed the first detective's car hit a parked car and then drive into a storefront. Instead of calling 9-1-1 or identifying himself as a member of the service to the people at the scene, the lieutenant escorted the first detective away from the scene with the second detective. The lieutenant did not call for a patrol supervisor or make a report to IAB. He did notify his Commanding Officer about the accident, but only after two hours had passed.

The Commanding Officer instructed the lieutenant to report to the precinct, but the lieutenant waited approximately five hours before doing so. Thus, by the time he reported, more than seven hours had elapsed since the incident.

The lieutenant pled guilty to 1) failing to remain at the scene and request the response of a patrol supervisor after being involved in a police incident; 2) failing to immediately notify the Internal Affairs Bureau Command Center of a purported allegation of corruption or serious misconduct involving a member of the service; and 3) failing to immediately comply with an order issued by his Commanding Officer in that after he informed his Commanding Officer that he and several other members of the service were involved in an off-duty incident, his Commanding Officer directed him to report to the precinct and he failed immediately to comply.

The lieutenant was placed on dismissal probation, forfeited the 36 days he had been suspended immediately following the incident and 9 vacation days, and lost his promotion.

The Commission believed this officer should have been separated from the Department. As a high-ranking member of the Department, he had an enhanced responsibility to request a patrol supervisor to respond, and to notify IAB about the accident. Instead, he actively impeded an investigation by orchestrating the removal of the detective from the scene, and by refusing to present himself at the precinct promptly as directed.

8. Firearms

The Commission has included this category in its past two reports.¹⁰⁵ Even before the Commission tracked cases by categories, it routinely commented on the discipline imposed in firearms cases.¹⁰⁶ The Commission focuses on this category of misconduct because of the potentially grave consequences of firearm misuse. This category includes the unjustified discharge or off-duty display of a firearm. It also includes the failure to adequately safeguard or promptly report the loss of a firearm, given the importance of keeping weapons out of the hands of people who lack the necessary training to handle them, or who intend to use them in the commission of crimes, or both.

The various subcategories of firearms misconduct are set forth in the following table, below along with the penalty range and the most commonly imposed penalty for each subcategory.

¹⁰⁵ See *Seventeenth Annual Report* at p. 42 and pp. 139-145 and *Eighteenth Annual Report* at p. 40 and pp. 139-146.

¹⁰⁶ See *Tenth Annual Report* at pp. 25-29; *Eleventh Annual Report of the Commission* (“*Eleventh Annual Report*”) (February 2009) at pp. 26-31; *Twelfth Annual Report* at pp. 30-35; *Thirteenth Annual Report of the Commission* (“*Thirteenth Annual Report*”) (March 2011) at pp. 12-14; *Fourteenth Annual Report of the Commission* (“*Fourteenth Annual Report*”) (February 2012) at pp. 23-25; *Fifteenth Annual Report* at pp. 45-50; and *Sixteenth Annual Report* at pp. 79-81. See also *The New York City Police Department’s Disciplinary System: How the Department Disciplines Its Members Who Engage in Serious Off-Duty Misconduct* (August 1998) at pp. 50-58.

| Subcategory of Firearm Misconduct | # of Cases | Penalty Range | Most Common Penalty |
|---|------------|---|---------------------|
| Unjustified Off-Duty Display ¹⁰⁷ | 3 | 25-30 Vacation Days | - |
| Unjustified/Accidental Discharge | 7 | 10 Vacation Days – Vested Retirement + Dismissal Probation and 60 Suspension Days | 15 Vacation Days |
| Failure to Safeguard ¹⁰⁸ | 20 | 10 Vacation Days – 30 Vacation/Suspension Days | 20 Vacation Days |
| Other ¹⁰⁹ | 3 | 10 Vacation Days – Termination | - |

a) Off-Duty Display

In past reports, the Commission has recommended that when a member of the service unjustifiably displays a firearm during an off-duty encounter, the Department should include dismissal probation as part of the penalty unless there are mitigating circumstances that demonstrate monitoring is not necessary.¹¹⁰ For this Report, the Commission reviewed three cases involving the unjustified off-duty display of a firearm. Of these, two officers were found guilty of this type of misconduct and penalized with the loss of vacation days. The Commission disagreed with the discipline in one of these cases.

The case involved a police officer with more than ten years of service who lifted his shirt and displayed a holstered firearm to a department store cashier after his wife's application for a store credit card was denied. According to the cashier, the subject officer never identified

¹⁰⁷ An unjustified on-duty display of a firearm would be included in the FADO-Force category.

¹⁰⁸ This category includes the failure promptly to report the loss of a firearm.

¹⁰⁹ This category includes mishandling a firearm (dismissal probation and 30 vacation days) and failing to notify the Department of the acquisition of a firearm (10 vacation days). The final case involved improper tactics used by the subject officer, which concluded in a fatal shooting. Charges were filed after that subject officer resigned to avoid termination, which was the recommended penalty.

¹¹⁰ *Tenth Annual Report* at p. 27; *Eleventh Annual Report* at pp. 26 and 28-29; *Twelfth Annual Report* at p. 35; *Thirteenth Annual Report* at pp. 13-14; *Fourteenth Annual Report* at pp. 23 and 25; *Fifteenth Annual Report* at pp. 45-47; *Sixteenth Annual Report* at p. 80; *Seventeenth Annual Report* at pp. 140-141; and *Eighteenth Annual Report* at pp. 140-141 and 173.

himself as a police officer. Store security contacted the police, and when responding officers located the subject officer in his car, he did not immediately identify himself as a member of the service. When later questioned by investigators about displaying his firearm, he stated that he was merely trying to confirm his salary to the cashier. He also claimed that he did identify himself as a member of the service, both to the cashier and to the responding officers. This claim was contradicted not only by the cashier and the responding officers, but also by the subject officer's own wife, who had been present in the officer's car.

The officer ultimately pleaded guilty to four specifications, including engaging in Conduct Prejudicial for wrongfully lifting his shirt and displaying his holstered firearm inside a department store without police necessity, and failing to immediately identify himself as a member of the service to on-duty members of the service when confronted during a felony vehicle stop. The penalty was forfeiture of 25 vacation days.

Consistent with its past recommendations in firearms cases, the Commission believed that imposition of dismissal probation in combination with the forfeiture of vacation days was the appropriate penalty. The officer's display of his firearm and his failure promptly to identify himself to the responding officers deserved more significant consequences. In reaching this conclusion, the Commission viewed as an aggravating factor the officer's false claim that he had repeatedly identified himself as a member of the service. Had this claim been charged as a false statement, it could have justified termination.

b) Unjustified/Accidental Discharge

The Commission reviewed seven cases involving the unjustified or accidental discharge of a firearm. Five of these occurred while the officer was on-duty. The penalties imposed ranged from 10 vacation days to a vested retirement with a loss of 60 suspension days, with 15 vacation days being the most common penalty. The Commission agreed with the penalties

imposed in all of the unjustified discharge cases, but continues to recommend that the Department impose enhanced penalties when there is a corresponding failure to make a timely report of the discharge. Failure to make a prompt report affects the Department's ability to investigate the discharge and can also affect examinations of future discharges. Because of the need for deterrence in this particularly serious area, the Commission believes termination is the appropriate penalty for the failure to promptly report any firearms discharge, unless extenuating circumstances are present.

c) Failure to Safeguard

While the failure to safeguard a firearm typically does not involve the level of intent that is present in the unjustified display of a firearm, this is still a serious form of misconduct deserving a significant penalty. Failure to safeguard a firearm includes accidentally leaving the firearm unattended in public, storing the firearm in an unsecured location, and allowing people who have not been properly trained to handle the firearm. The Commission reviewed 20 cases in which the most serious misconduct was the failure to safeguard a firearm. These cases resulted in penalties ranging from the forfeiture of 10 vacation days to a combined 30 vacation and suspension days. The most common penalty imposed was the forfeiture of 20 vacation days. The Commission agreed with all of the penalties in these cases, but notes that, in general, those failure to safeguard cases that arise from allowing a civilian to handle the firearm are more serious and should result in a stiffer penalty, as the subject officer has acquiesced to an untrained person having access to a deadly weapon. This is especially true if the firearm is loaded. Additional aggravating factors include the failure to recover the firearm; harm caused by the firearm; delay in reporting the firearm missing; vulnerable civilians, such as children, having access to the firearm; and a prior history of this type of negligence.

9. Harassment/Improper Contact

Previously, the Commission included cases of Harassment and Improper Conduct under the Other On-Duty Misconduct category¹¹¹ or in the Miscellaneous category.¹¹² For this and future reports, the Commission wishes to track more closely those cases where officers act in an inappropriate manner towards witnesses, their colleagues or subordinates, or engage in (or try to initiate) improper romantic relationships with civilians, including suspects/arrestees, and victims/complainants. Accordingly, the Commission has created this new category.

a) Harassment/Improper Contact with Other Members of the Service

The Commission reviewed three cases that fell within this sub-category. Two cases involved the subject officer making derogatory statements directed to the ethnicity or national origin of subordinates, and one case involved an officer sexually harassing or engaging in sexually-related misconduct with colleagues. Penalties ranged from loss of 15 vacation days to dismissal probation and a loss of 45 vacation days. The Commission disagreed with the penalties imposed in two of the three cases.

One of these cases involved a captain with seventeen years of service and no disciplinary history at the time of the incidents. He was accused of using derogatory language towards two lieutenants under his command. One claimed that he made statements disparaging her country of origin and her gender; the other stated that the subject captain linked him with a terrorist group based upon his ethnicity. The captain pled guilty to two counts of making one or more disparaging remarks directed at the 1) religion and/or ethnicity of another member of the service and 2) ethnicity, race, gender, and/or national origin of another member of the service. He

¹¹¹ See *Eighteenth Annual Report* at pp. 147-152.

¹¹² See *Sixteenth Annual Report* at pp. 66-69. See also *Fifteenth Annual Report* at pp. 33-35

forfeited 20 vacation days and was directed to cooperate with Department counseling.

The Commission found this penalty insufficient. As the commanding officer, the captain should have served as an example to all of the personnel in his command. Behavior such as this should be met with severe discipline in order to discourage other officers from engaging in similar conduct. As noted by the Commission in its *Eighteenth Annual Report* and as recognized by the Assistant Advocate in this case, the subject officer's role as a supervisor could effectively deter subordinates from making complaints due to fear of retaliation. In this captain's case, the Commission believed that a period of monitoring was desirable, and thus dismissal probation was warranted.¹¹³ In these types of workplace encounters, the Commission believes that greater penalties are warranted when the contact occurs between a supervisor and a subordinate and when there are multiple instances of harassing behavior.

The Commission was further concerned to see that the captain's supervisor, a deputy chief, recommended that the matter be addressed with a simple command discipline – the least severe form of discipline. That level of discipline would have been wholly inappropriate to address the captain's repeated misconduct.

Severe penalties should also be imposed when it is clear, in cases involving sexual harassment and sexual discrimination, that the complainant was not receptive to, or was offended by, the contact. In cases of consensual sexual relationships between colleagues, significant penalties should be imposed if the subject officers were on duty at the time of the sexual interaction.

¹¹³ This is consistent with the Commission's penalty recommendations for similar cases involving supervisors and subordinates. See *Eighteenth Annual Report* at p. 147.

b) Harassment/Improper Contact with Civilians

Police officers typically encounters many members of the public during the course of performing their duties. These civilians can include people whom the officer arrests or investigates, and victims of or witnesses to crimes. The formation of a romantic or sexual relationship with such civilians is clearly problematic: an officer's romantic or sexual involvement with a civilian prior to the conclusion of a criminal prosecution would almost certainly undermine the chances of a conviction, as the officer's credibility would be compromised. A suspect or arrestee might feel coerced to engage in an unwanted relationship to avoid an arrest or to achieve a better outcome for his or her case. A complainant might believe that failure to acquiesce to an officer's overture -- whether expressed as a demand or a suggestion -- will result in his or her case not being fully investigated. Domestic violence and sexual offense victims may be particularly vulnerable and susceptible to an officer's advances.

The Commission reviewed three cases involving officers who improperly tried to engage in romantic relationships with civilians whom they met in the course of performing their job responsibilities. One civilian was an arrestee, one was a victim in a domestic violence complaint, and one was an emotionally disturbed person who was the subject of a complaint at a homeless shelter. The range of penalties in these cases was from 15 vacation days to termination. The Commission agreed with the penalties imposed in two of the three cases. In the remaining case, the subject officer was assigned as a domestic violence officer with the precinct and was mediating a marital problems between a husband and wife. Soon after, the subject officer engaged in a sexual relationship with the wife. The evidence indicated that the wife had initiated the relationship as retaliation for her husband's infidelity. During this brief relationship, the subject officer also misused Department resources to provide the wife with the contents of a 9-1-1 call made by the husband. The subject officer pled guilty to 1) Conduct

Prejudicial for having an inappropriate relationship with the wife, and to 2) wrongfully utilizing a Department computer to conduct a database query unrelated to Department business and wrongfully revealing the confidential findings of that query to a non-member of the Department. The subject officer lost 15 vacation days as his penalty. Given that the subject officer did not initiate the relationship and had no prior disciplinary history and high performance ratings, the Commission did not believe that a period of monitoring was necessary. However, based on both specifications, the Commission believed that the officer should have forfeited a greater number of vacation days.

Generally, the Commission believes that an officer who engages in a romantic or sexual relationship with an arrestee in a pending criminal case should be terminated. Also, officers who engage or attempt to engage in sexual relationships with minors should be terminated. Multiple instances of unwanted or harassing contact should result in significant penalties that at least include dismissal probation. An officer should not use Department resources to obtain a civilian's personal information for purposes of engaging in a romantic or sexual relationship with the civilian, nor should an officer use Department facilities or resources to do a favor for a person with whom he or she has a relationship. Such behavior should be treated as an aggravating factor that results in an enhanced penalty.

10. Insubordination

The Commission reviewed seventeen Insubordination cases that were adjudicated between October 2016 and September 2017.¹¹⁴ Insubordination usually involved the failure to comply with an order (nine cases); on-duty discourtesy to a supervisor (five cases); or a physical

¹¹⁴ One of these officers had two Insubordination cases covered by the same penalty. Another two officers also had a second disciplinary case that was resolved at the same time with one penalty.

altercation (or attempted physical altercation) with a supervisor (three cases). Penalties for this category ranged from the forfeiture of eight vacation days to service retirement,¹¹⁵ with dismissal probation and a loss of days being the most common penalty.¹¹⁶ These were some of the most significant penalties across all case categories. The Commission agreed with all of the penalties for Insubordination.

11. Minor Rules Violation

This new category consists of all misconduct classified as Administrative Failure in the Commission's two prior annual reports except Computer Misuse, which is now a stand-alone category. It captures a large variety of minor misconduct including misuse of sick time, failing to reside in the required resident counties, failing to submit Department paperwork, and failing to sign in and out of roll call. Generally, this type of misconduct is adjudicated along with more serious misconduct, and therefore, only ten cases were categorized as purely Minor Rules Violations. Most cases involving solely such violations are resolved at the command level and not adjudicated through the formal disciplinary system. Usually, charges are issued just for this type of misconduct when the subject officer has refused a command discipline, has a significant disciplinary history, is currently on dismissal probation or other Department monitoring, or has received multiple command disciplines in a short time period.

Penalties for this category ranged from 10 to 25 vacation days. The case receiving the most serious penalty involved a failure to reside in the resident counties and being absent from the resident counties while on sick leave. Most cases involved the violation of sick leave rules

¹¹⁵ The penalty involving service retirement also included dismissal probation and a loss of 60 combined vacation and suspension days.

¹¹⁶ For one case, charges were dismissed and the matter was returned to the command for the misconduct to be addressed there.

and received a penalty of the forfeiture of ten vacation days. The Commission agreed with all of the penalties in the Minor Rules Violation category.

12. Miscellaneous

The Miscellaneous category most closely resembles the “Other Off-Duty Misconduct” category in the Commission’s prior reports. The charges in this category do not fit into any other category, and while the misconduct can be relatively minor, it can also be very serious and thus deserving of significant penalties. The Commission reviewed 19 cases in this category. The subcategories of these cases and the penalties imposed are set forth in the table below.

| Subcategory Type | # Cases | Penalty Range | Most Common Penalty | # Cases in which CCPC Disagreed with Penalty |
|---|---------|--|---------------------|--|
| Unauthorized Off-Duty Employment | 3 | 10-15 Vacation Days | 10 Vacation Days | - |
| Unauthorized/Misuse of Department/Other Law Enforcement Resources | 3 | 15 Vacation Days- Dismissal Probation + 45 Vacation Days | - | - |
| Social Media Misconduct | 2 | 10-15 Vacation Days | - | 1 |
| Subject Officer in Dispute with On-Duty Law Enforcement | 2 | 11 Suspension Days- 25 Vacation Days | - | - |
| Fail to Cooperate/Impede an Investigation | 3 | 15-25 Vacation Days | - | - |
| Motor Vehicle Accident | 1 | 5 Vacation Days | - | - |
| Improper Contact with Prosecutors/Defense Attorneys or Conducted Unauthorized Investigation | 2 | 20-30 Vacation Days | - | 2 |
| Other ¹¹⁷ | 3 | 8-30 Vacation Days | - | 1 |

¹¹⁷ These three cases involved the following: one case of a subject officer failing to remain at the scene of an off-duty police incident, one case of a subject officer allowing another MOS to sign a court document on his behalf, and one case of a subject officer requesting preferential treatment from another MOS regarding enforcement related to a food cart owned by the subject officer.

While many of these cases involved unique circumstances, prior to this reporting period, the Commission had begun informally monitoring one sub-category of cases: those involving disputes between off-duty members of the service and on-duty law enforcement officers. The Commission has noticed several disciplinary cases involving this type of dispute, and views these cases with particular concern. Members of the service who berate other law enforcement officers, or who otherwise attempt to prevent other officers from taking appropriate police action, can send a message to any civilians present that law enforcement personnel need not be respected, and that their instructions need not be followed. Such conduct not only degrades respect from law enforcement generally, but can also lead to the continuation or even escalation of a conflict. Particularly where off-duty members of the service who are armed refuse to cooperate with instructions from on-duty officers, the situation can rapidly take a dangerous turn, involving a level of force that would otherwise be unnecessary. In any event, a member of the service should not present this kind of example to the public.

The Commission reviewed two cases involving disputes between off-duty members of the service and on-duty law enforcement personnel. Penalties in these cases ranged from 11 suspension days to 25 vacation days. Although the Commission ultimately agreed with the penalties the Commission was troubled by the path that led to the penalty in one of the cases.

The case involved an off-duty detective with over 12 years of employment with the Department. The detective had no disciplinary history and high ratings on his performance evaluations, but when on-duty police officers responded to a block party he was attending and asked to see the permit, he tried to interfere with the officers by yelling at them, threatening them, and later yelling at their sergeant. The sergeant found him unfit for duty. In his statement to investigators, the detective denied being intoxicated or belligerent. However, he later pled

guilty to being unfit for duty and being discourteous to the sergeant and the two responding police officers.

DAO recommended that the subject detective forfeit 25 vacation days and cooperate with Department counseling programs. Noting the “severity and totality of the substantiated misconduct,” the First Deputy Commissioner recommended that in addition to that penalty, the subject detective be placed on dismissal probation and cooperate with random quarterly breath testing. This enhanced penalty was approved by the Police Commissioner, who also directed that the detective be transferred to another borough. Less than 3 months later, however, the Police Commissioner reversed himself, without explanation, and instituted the original penalty requiring only the forfeiture of 25 vacation days.

While the imposed penalty may have been adequate, given that this behavior was most likely a result of the subject detective’s intoxication and seemed to be an anomaly in an otherwise praiseworthy career, the Commission was concerned by the Commissioner’s reversal of a more severe penalty without explanation. Discipline among officers needs to be consistent, and such lack of transparency lends credence to concerns that discipline is influenced by the rank of the officer, and who that officer knows in the Department.

One other scenario falling into the Miscellaneous category concerned the Commission. In two cases, members of the service used their positions in attempts to aid civilian acquaintances who were arrested or criminally prosecuted. This aid took the form of contacting prosecutors seeking preferential treatment for the civilian, contacting defense attorneys with information, intervening with other members of the service to prevent the arresting or summoning of the civilian, and conducting an unauthorized investigation into the circumstances that gave rise to the civilian’s arrest. This type of misconduct undermines the operation of law enforcement and can result in dismissal of cases against guilty civilians. In the two cases

reviewed during this rating period, the penalties ranged from the forfeiture of 20 to 30 vacation days. The Commission disagreed with the penalty in both cases.

In one of these cases, a sergeant took numerous steps to disrupt the criminal prosecution of his confidential informant (CI) for attempted murder. He spoke with the Assistant District Attorneys prosecuting the case in an effort to convince them that others were responsible for the attempted homicide, spoke with the CI's defense attorney and provided information that the victim had identified someone else as responsible, and after the victim was arrested on an unrelated charge, spoke to the victim as he was being held in the precinct cells. After this conversation, the victim stopped cooperating with the criminal prosecution and fled the jurisdiction. The case against the CI was dismissed.

In exchange for the sergeant's plea of guilty to five specifications arising from these actions, DAO recommended that he forfeit thirty vacation days, noting that he was highly regarded and decorated, had excellent reviews, and no disciplinary history. This recommended penalty was originally disapproved by the Police Commissioner, who added a period of dismissal probation. However, approximately 4 months later, the Police Commissioner reversed himself and approved the original 30-day penalty without further explanation. The Commission believed that this penalty was inadequate, and that this sergeant should have been terminated. In any event, in the interest of transparency, the Police Commissioner should have explained his basis for modifying the penalty he originally imposed.

13. Narcotics

The Commission reviewed five cases involving narcotics. DAO disposed of four cases as charges filed and the remaining case resulted in termination. The Commission agreed with the penalty imposed in that case.

14. Performance of Duties

This new category consists of all misconduct classified previously as Duty Failure except Failure to Report, which is now a stand-alone category.¹¹⁸ In the *Eighteenth Annual Report*, the Commission focused on cases in which the main misconduct involved failures to adequately investigate a criminal complaint, to provide assistance to a colleague, and to provide supervision to subordinates which typically resulted in a subordinate engaging in preventable misconduct.

For this Report, the Commission further divided this category into the following subcategories:

| Subcategory | Number of Cases | Penalty Range | Most Common Penalty | Disagreed with Penalty |
|---|-----------------|--|---------------------|------------------------|
| Failure to Adequately Investigate/Failed to Take Police Action ¹¹⁹ | 17 | 2 Vacation Days-Service Retirement + 45 Vacation Days | 10 Vacation Days | 2 |
| Failure to Provide Proper Supervision | 10 | 10 Vacation Days-Service Retirement + Dismissal Probation + 45 Vacation Days | 15 Vacation Days | 2 |
| Failure to Prepare Department Reports | 5 | 1-10 Vacation Days | 10 Vacation Days | - |
| Absent Without Leave/Off-Post/Engaged in Personal Business While On Duty | 14 | 5 Vacation Days-Vested Retirement + Dismissal Probation + 60 Suspension Days | 30 Vacation Days | 2 |
| Inattentive While on Duty | 2 | 20 Vacation Days-Vested Retirement + Dismissal Probation + 30 Suspension Day | - | - |
| Failed to Appear in Court/Unprepared for Court | 1 | 7 Vacation Days | - | - |
| Misclassification of Crime Reports | 7 | 5-20 Vacation Days | 5 Vacation Days | 1 |
| Failure to Safeguard a Prisoner or an Emotionally Disturbed Person/Failure to Safeguard a Crime Scene | 5 | 12 Vacation Days-20 Vacation/Suspension Days | 12 Vacation Days | - |

¹¹⁸ These “Failure to Report” cases are discussed *supra* at pp. 80-82.

¹¹⁹ This sub-category included the subject officer’s failure to intervene when another member of the service used excessive or unnecessary force against a civilian and failure to respond to radio runs.

The Commission discusses the subcategories of failure to adequately investigate, failure to supervise, and the misclassification of crime reports in more detail in the following pages.

a) Failure to Investigate

One of the primary responsibilities of a member of the service is to investigate complaints made by civilians and then take appropriate action on those complaints. However, there are some officers who fail to take the minimum required steps. In the past, the Commission noted that the typical penalty for this type of misconduct appeared to be the forfeiture of 15 vacation days.¹²⁰ In the cases reviewed for this Report, that penalty seems to have decreased to the forfeiture of ten vacation days. The Commission believes that, in general, when the misconduct is the result of a good faith mistake or is an isolated incident, either penalty is sufficient. However, a greater penalty is warranted when the misconduct results in severe, possibly preventable harm, or is one of a series of failures to adequately discharge the responsibilities of the job, or is one in which there was a complete abandonment of the officer's job responsibilities. In these situations, the Commission has typically called for the imposition of dismissal probation in addition to the forfeiture of vacation days.¹²¹

The Commission disagreed with the penalties imposed in two cases included in this subcategory. In the first of these cases, the subject officer had been discussed in two prior Commission reports. In both of those prior reports, the Commission expressed the view that the officer should have been terminated. In one prior case, the officer had been placed on dismissal probation and forfeited thirty vacation days after issuing a summons with a false narrative and then making false statements in an official Department interview about why the recipient failed

¹²⁰ *Eighteenth Annual Report* at pp. 82-83.

¹²¹ *Id.*

to sign that summons.¹²² In the second case, the officer had been observed standing next to her boyfriend, who had been arrested previously, while he took photographs of a license plate of an unmarked police vehicle assigned to the division responsible for his arrest. When questioned about this in an official Department interview, the officer had indicated that her boyfriend felt he was being harassed by members of the service. She had not reported her boyfriend's allegation, as required. For her failure to report that allegation as well as her continued association with a person she knew to have a criminal history, the officer forfeited 30 vacation days.¹²³ In addition to the two cases previously commented on by the Commission, the officer had received a command discipline and forfeited three vacation days for being unprepared for a Traffic Violations Bureau case.

In the current case, this same officer and her partner responded to a shoplifting complaint. Security at the store was holding a male for the police and had prepared paperwork to be used in his criminal prosecution. Security had also prepared a "disbarment" form, barring the individual from entering any store in the chain for a period of two years. The officer and her partner escorted the alleged shoplifter out of the store and released him. They both indicated in their memo books that the job was disposed of as "no shoplifter." In their official Department interviews, both officers claimed that they believed that when a disbarment form was completed, no criminal prosecution would be pursued and, therefore, an arrest was unwarranted.

The subject officer pled guilty to: 1) failing to prepare the required arrest paperwork; 2) failing to take police action; and 3) making improper entries in her activity log. She forfeited 20 vacation days. In justifying this penalty, DAO cited two cases as precedent in which officers

¹²² See *Thirteenth Annual Report* at p. 20 for further details about that case.

¹²³ See *Eighteenth Annual Report* at pp. 156-157 for further details about this case.

forfeited 15 vacation days for failing to take complaint reports, and stated that this subject officer's penalty was enhanced due to her disciplinary history. However, in neither of the precedential cases was the perpetrator released, as here. Coupled with the subject officer's significant disciplinary history, the Commission believed that she should have been placed on dismissal probation, if not terminated outright.

The second case with which the Commission disagreed with the penalty involved a lieutenant assigned to IAB. At the time of this incident, the subject lieutenant was assigned to IAB's Command Center, the hotline for taking complaints about members of the service. One of his responsibilities was logging messages left on the Command Center's answering machine. On two dates, he deleted a total of eight messages without logging them. This misconduct was reported by a sergeant in IAB who observed him delete the messages without listening to them. In his official Department interview, the lieutenant admitted deleting the messages but claimed that he did not do so intentionally, attributing his conduct to being distracted or punching the wrong code. He pled guilty to one specification of wrongfully deleting telephone messages and as a penalty, he forfeited fifteen vacation days.

In recommending the penalty, DAO likened the misconduct to that of a member of the service misclassifying a crime through the preparation of a complaint report for either a less serious crime or for lost property. The Commission did not find this conduct analogous. The lieutenant's actions erased any record of the complaints, all but ensuring that there would be no investigation, making his misconduct comparable to those cases in which officers fail to conduct investigations or dispose of evidence to a crime. Also, given his high rank and his assignment as a supervisor in a section whose primary purpose is to take complaints against members of the service, a significantly higher penalty, including dismissal probation, was warranted.

b) Failure to Supervise

Supervisors have the important duty to guide their subordinates and take action to prevent or correct mistakes and misconduct. The failure to do so can not only lead to inadvertent misconduct by subordinates but can actually encourage misconduct if the subordinates observe that there are no negative consequences. When the supervisor is the person engaging in misconduct, the supervisor models that behavior for colleagues, and sends a message that such transgressions, and perhaps others, will be tolerated. Because of the possible far-reaching impact, these types of cases merit significant penalties.

The Commission disagreed with the penalty imposed in two cases involving the failure to supervise. One of these cases involved a sergeant whose subordinate confided to her that he had been illegally using OxyContin and owed money to a narcotics dealer. The sergeant failed to notify anyone in the Department for a period of four days. Her stated reason for the delay was that she was not certain who to notify. She pled guilty to charges that included failing to supervise a subordinate member of the service upon learning or suspecting that said subordinate was using or may have used illegal drugs or controlled substances. For this misconduct, the sergeant forfeited 15 vacation days. The subordinate tested positive for cocaine and resigned from the Department.

While 15 vacation days might normally be sufficient in failure to supervise cases, in this case it was not. The NYPD has a zero tolerance policy for illegal drug use and for using prescription drugs in an illegal manner. All officers found to have used drugs illegally are terminated, unless they resign first. These disciplinary cases are often expedited and for good reason. An officer under the influence of drugs can have his or her perception and/or judgment affected in a manner that could cause harm to others, becomes vulnerable to blackmail, and if addicted, may commit crimes to sustain the habit. The sergeant had a confession of illegal drug

use from the officer. Despite that confession, four days passed while the officer continued on full duty status in possession of his firearm, and was compromised by his debt to a narcotics dealer. The sergeant's explanation for the delay was unavailing. As a supervisor, she had a responsibility to find out who to notify and to protect the public from an officer who was under the influence of opioids. She failed in this responsibility and should have been placed on dismissal probation.

c) Crime Misclassification

While Crime Misclassification actually qualifies as a false statement, the individual officer generally has nothing to gain by falsifying police reports and the misconduct may be committed at the behest, explicit or implied, of higher ranking officers hoping to drive down crime rate statistics. Therefore, the Commission does not typically recommend separation from the Department in accordance with the Department's false statement policy. In the past, the Department has typically required the forfeiture of 15 vacation days for this misconduct. However, for the period covered here, the most common penalty was the forfeiture of only five vacation days. The Commission notes that the 15-day penalty provides greater deterrence and that the presence of aggravating factors may justify even higher penalties. These aggravating factors include the completion of false reports about multiple incidents, the subject officer's supervisory rank, and the subject officer's direction to a subordinate to complete the report incorrectly. Two of these factors were present in the following case, which was the only case in this subcategory where the Commission believed a more significant penalty was warranted.

Police were called to a store on an assault in progress complaint. A security guard told responding officers that when he attempted to stop a female for shoplifting, he was surrounded by a group of people. He reported that a male hit him over the head with a skateboard, and then broke a window with the skateboard as the group ran. The sergeant who responded, assigned as

the patrol supervisor, interviewed the security guard and directed one of the police officers to prepare complaint reports for Assault in the Third Degree and Criminal Mischief, both misdemeanors, even though the facts supported the crime of Robbery in the Second Degree, a felony.

The inaccurate complaint reports were discovered after an anonymous letter alleged systemic downgrading of crime reports in that precinct. The sergeant pled guilty to 1) failing to make accurate and concise entries in Department records by causing inaccurate information to be entered in a complaint report and 2) failing to record facts sufficient to allow proper preliminary classification on an offense in a complaint report. He forfeited ten vacation days as a penalty.

Because this was a sergeant who directed a subordinate to prepare improper complaint reports, the Commission believed that he should have received a greater penalty. In addition, he also apparently made false statements in his official Department interview regarding what the security guard relayed to him, and therefore, should have been charged with making a false statement. Incidentally, the paperwork reviewed by the Commission indicated that the sergeant had been chosen to perform the assignment of writing questions for the sergeant's examination; the Commission questions whether this sergeant was the appropriate candidate for the assignment.

15. Perjury/False Statements

The Commission has often disagreed with the penalties imposed in a significant number of cases in this category, and has also often remarked on the substitution of other charges for a charge pursuant to Patrol Guide §203-08, the provision that sets forth the Department's false statement policy. We note, in this regard, that the Independent Panel appointed by the Police Commissioner agreed with many of the Commission's previous recommendations for this type

of misconduct.¹²⁴ Because of the serious nature of this misconduct and the Commission’s long-standing focus on it, the Commission has included all cases that contained a false statement component in its analysis, whether or not the case involved other allegations that could be deemed more serious.

a) Charging Decisions

In its past examination of false statement cases, the Commission has found that in many cases the Department has not charged an officer with making false statements pursuant to Patrol Guide §203-08 although such a charge appeared appropriate. Instead, the Department either used other provisions to address the false statement or neglected to bring any charge regarding the misconduct. When an alternate charge was brought, most often it was brought pursuant to Patrol Guide §203-10(5), “engaging in conduct prejudicial to the good order, efficiency or discipline of the Department” (“Conduct Prejudicial”). Unlike charges brought under Patrol Guide §203-08, such alternate charges do not carry a presumption in favor of termination. In cases where there was insufficient evidence of an officer’s intent, and it appeared plausible that the officer might have made the false statement in error, the Commission believed an alternate charge was appropriate. However, often the preponderance of the evidence¹²⁵ clearly indicated that the false statement was intentional, yet the officer was charged with Conduct Prejudicial instead of making a false statement, and there was no explanation why a false statement charge was not levied.

¹²⁴ See *The Report of the Independent Panel on the Disciplinary System of the New York City Police Department* (January 25, 2019) at pp. 38-41 and 53-54.

¹²⁵ Preponderance of the evidence is the standard of proof that applies in the Department’s administrative disciplinary proceedings. To meet this standard, the Department has to present sufficient evidence to demonstrate that it is more likely than not that the misconduct occurred.

The following table illustrates the false statement allegations adjudicated during this time period¹²⁶ and indicates whether the officers were charged pursuant to Patrol Guide §203-08 or an alternate Patrol Guide provision. There were also 20 cases where no charges were included to address apparent false statements.

| Officers Charged with Misconduct Involving False Statements¹²⁷ | Officers Charged with False Statements Under Patrol Guide §203-08 | Officers Charged with False Statements Under Alternative Patrol Guide Sections | Officers Who Had No Charges to Address False Statements |
|--|--|---|--|
| 62 | 9 | 53 | 20 |

While some of the 73 officers who were not charged with making a false statement under Patrol Guide §203-08 may have lacked the requisite intent to lie, in other cases false statement charges appeared provable but were not brought. In one such case, the subject and a former officer with whom he had once had an intimate relationship had a physical altercation in a park. During that altercation, the former officer pulled her firearm on the subject officer who disarmed her, disassembled the weapon, and struck her. When a bystander called 9-1-1, the responding officers were met by the subject, who identified himself and told them that nothing had occurred. The Department learned of the incident four months later when the former officer filed a civil lawsuit against the subject officer, the Department, and the City of New York.

In his two official Department interviews, the subject downplayed the nature of his relationship with the former officer and denied that either displayed a firearm or engaged in any physical altercation. Despite being confronted with text messages that mentioned she had pointed a firearm at him, the subject officer continued to deny that this had ever occurred.

¹²⁶ The Commission only included the most serious false statement allegation for each case.

¹²⁷ This includes those cases in which the false statement did not appear to be intentional but rather was made in error or due to carelessness.

The subject officer pled guilty to three specifications for wrongfully engaging in a physical altercation, failing to request the response of a Patrol Supervisor, and impeding an official Department investigation.¹²⁸ He forfeited 45 vacation days. The Assistant Advocate recommended this penalty, noting that there should be an upward departure from precedent, which imposed penalties ranging from 20 to 30 days.

In accordance with the Commission's recommended penalties for domestic cases, at least dismissal probation should have been imposed. In addition, given the false statements made in the subject's official Department interviews, charges should have been brought to address that misconduct.

b) Penalties

The Commission continues to disagree with the penalties in multiple cases in this category. The following charts detail the context in which the false statements occurred and whether the officers' employment was terminated as a consequence of the administrative cases against them. The first chart is limited to those cases in which the officer was found guilty of violating Patrol Guide §203-08. The second chart on the next page depicts the penalties for those cases in which an alternate charge was used to address a false official statement.

| Charged Under Patrol Guide §203-08, by Context (7 total)¹²⁹ | Separated from the Department | Penalty Did Not Include Separation | Found Not Guilty of Patrol Guide §203-08 or Charge Dismissed |
|---|--------------------------------------|---|---|
| Sworn Testimony | - | - | - |
| Sworn Documents | - | 1 | - |
| Department Interviews | 3 | - | 2 |
| CCRB Interviews | - | 1 | - |

¹²⁸ The third specification appeared to be based on the subject's statement to the responding officers that nothing had occurred, and not to the statements he made during his official Department interview.

¹²⁹ There were also two cases that were disposed of as charges filed; both involved false statements to Department investigators.

| Charged Under Alternative Patrol Guide Sections, by Context (47 total) | Separated from the Department | Penalty Did Not Include Separation | Found Not Guilty of Alternative False Statement Charge or Charge Dismissed |
|---|--|---|---|
| Sworn Testimony | - | 1 | - |
| Sworn Documents ¹³⁰ | - | 4 | - |
| Department Interviews | 2 | 12 | 3 |
| CCRB Interviews | - | 1 | - |
| Department Records ¹³¹ | 1 | 16 | - |
| Other ¹³² | 2 | 5 | - |

(i) Sworn Testimony

The Commission reviewed one case involving false testimony made under oath. The subject officer received dismissal probation and forfeited 30 vacation days. The Commission agreed with the disposition of this case because despite video contradicting the subject officer's testimony in the Grand Jury, the subject officer notified the Assistant District Attorney regarding the inaccuracies in his testimony before learning of the video. The District Attorney's office declined to bring criminal charges against the subject officer, in part, because there was no clear indication of his intent to lie. When questioned about the reasons for his false testimony, the subject officer maintained that while he was testifying, he "filled in the blanks of what he observed with information he learned later" and failed to make that clear. Because the evidence regarding the officer's intent at the time he testified was ambiguous, the Commission believed that placement on dismissal probation was appropriate.

¹³⁰ One additional case was disposed of as "charges filed."

¹³¹ Two additional cases were disposed of as "charges filed."

¹³² Six of the seven cases in this category involved subject officers making false and/or misleading statements to Department investigators or members of the Department's Medical Division; the remaining case involved a subject officer making false statements to an employee from the District Attorney's Office. Three additional cases were disposed of as "charges filed."

(ii) Sworn Documents

The Commission reviewed five cases in which the most serious charge involved false statements made in sworn documents, typically criminal complaints or supporting depositions attached to those complaints. Also included in this category were false statements made in summonses and desk appearance tickets. The penalties for this subcategory ranged from 30 vacation days to dismissal probation and 50 vacation days, with 30 vacation days being the most common penalty. The Commission disagreed with the penalties in four of these cases. As in the *Eighteenth Annual Report*, this category had the highest percentage of penalty disagreements. In one such case, the sergeant was a passenger in an on-duty motor vehicle involved in an accident with a civilian. The civilian was driving with a suspended license, and he was arrested at the sergeant's direction. In the criminal court complaint prepared by the local District Attorney's Office, the responding police officer indicated that he was informed by the sergeant that the civilian drove through a steady red light, and this caused the collision. The sergeant signed a supporting deposition verifying this was what had occurred. Video appeared to contradict this version of events. In his official Department interview, the sergeant stated he relied on his driver's version of events as he had not been paying attention to what occurred. When questioned about his sworn supporting deposition, he stated that he signed the document without fully reviewing it because he was busy.

The sergeant pled guilty to four specifications, including engaging in Conduct Prejudicial in that he signed a supporting deposition, attesting under the penalty of perjury to the truthfulness and completeness of a criminal court complaint, which contained inaccurate information. As a result, he forfeited 30 vacation days.

The Assistant Advocate took the position that the sergeant's act of signing the inaccurate supporting deposition was not intentionally misleading. Given that members of the service must

read documents that they are signing under penalty of perjury, especially those that initiate criminal proceedings, this sergeant should have been placed on dismissal probation as well as forfeiting vacation days.

(iii) Official Department Interviews and Official CCRB Interviews

Patrol Guide §206-13 requires members of the service to submit to formal interviews with Department investigators.¹³³ Refusal to answer questions can result in suspension and other discipline, including termination. Patrol Guide §211-14 requires officers to cooperate with CCRB investigations by answering interview questions. These Patrol Guide provisions are only meaningful if truthful answers are required, and the false statement policy explicitly includes false statements made in these circumstances. Often, however, these statements are characterized as “mere denials” of misconduct which are specifically excluded from the application of the policy. The Commission has repeatedly disagreed with the “mere denial” exclusion in the context of official Department and CCRB interviews.¹³⁴

The Commission reviewed 24 cases in which at least one of the most serious false statement specifications involved a false statement made in the context of an official Department (22) or CCRB interview (2). Penalties ranged from the loss of 12 vacation days to termination for false statements made in official Department interviews with dismissal probation and a loss of vacation and/or suspension days being the most common, while the 2 cases for making false statements in a CCRB interview resulted in penalties of the forfeiture of 25 vacation days in 1 and dismissal probation and the loss of 15 vacation days in the other.

¹³³ Department investigators are not limited to members of IAB. Various units in the Department can conduct investigations, including the subject officer’s own command.

¹³⁴ See *Ninth Annual Report* at pp. 35-36; *Tenth Annual Report* at p. 34; *Eleventh Annual Report* at p. 38; *Twelfth Annual Report* at p. 53; *Thirteenth Annual Report* at p. 18, fn. 61; *Fourteenth Annual Report* at p. 41; *Fifteenth Annual Report* at p. 60; and *Sixteenth Annual Report* at pp. 82-83.

The Commission disagreed with two cases involving false statements made in official Department interviews. In one, the false statement stemmed from an investigation into the subject officer's association with the owner of a tow truck company ("Owner"). As IAB investigated, they discovered that the officer had conducted computer license checks on Owner on two occasions. At his first official Department interview, when specifically asked whether these computer checks were done at the behest of Owner, the officer denied that had been the case. After the interview, the investigators interviewed Owner, who contradicted the officer and confirmed that the computer checks were performed at his request. Further investigation revealed corroborating telephone records and additional computer checks performed on employees of Owner's company. The officer was then re-interviewed and again claimed that the computer checks were done in furtherance of his assignment. When the investigators confronted the officer with their evidence, he admitted that he had conducted between 24 and 28 checks as a favor to Owner.

The officer pled guilty to five specifications, including three counts of engaging in Conduct Prejudicial for providing false or misleading statements and impeding an official Department investigation by misrepresenting his relationship with Owner. He was placed on dismissal probation and forfeited the 31 days that he was suspended prior to the adjudication of the case and an additional 14 vacation days. He also lost his assignment with an elite unit and was transferred back to a patrol borough. The Assistant Advocate noted that the officer was not charged pursuant to Patrol Guide §203-08 because the statements he made in his initial official Department interview constituted a "mere denial" that he had conducted the computer inquiries as a favor for Owner.

This case clearly demonstrates why the "mere denial" exception should not be applied to statements made in an official Department interview. It is all too easy for an officer to couch a

false statement as a “mere denial” and thereby to escape the appropriate discipline. Absent the availability of this exception, this officer might have been forthcoming from the beginning, and saved valuable investigative resources.

Despite not charging the officer with violating the Department’s false statement policy, the Assistant Advocate acknowledged that the officer’s “repeated misleading statements” were deserving of termination. However, the officer was not terminated due to his lack of disciplinary history and positive prior performance. In the Commission’s view, this officer should have been terminated. Worse than conducting multiple improper computer inquiries for a civilian, he repeatedly attempted to derail IAB’s investigation by deliberately providing false information.

The Commission also disagreed with the penalties in both cases involving false statements made during a CCRB interview. In one case,¹³⁵ a police officer lied about her interaction with a teenaged complainant and the cause of the teenager’s injuries. When the officer was interviewed by CCRB within a month of the incident, she stated that she arrested the complainant in the subway for theft of services without using force “except to restrain her in handcuffs.” She denied intentionally slamming the teenager’s head into either a pole or a gate, closing the emergency gate on the teenager’s body, or pushing the back of the teenager’s head. When the officer was shown video which revealed that she had indeed closed the gate on the teenager’s body, she told the CCRB investigator that she closed the gate accidentally because she tripped and was catching her balance. She then indicated the point in the video when she tripped, crossing one leg over another. She was tried by APU for her use of force against the teenager, found guilty, and forfeited 15 vacation days.

After CCRB made a complaint to IAB regarding the officer’s false statements to the

¹³⁵ The Commission reviewed the underlying IAB investigation for this case.

CCRB investigator, the officer was interviewed by members of IAB. She maintained that she had lost her balance, and denied that she had intentionally hit the complainant with the gate.

Although the officer proceeded to trial on the force allegation prosecuted by CCRB's APU, she pled guilty to the charge brought by DAO for making false and misleading statements during a CCRB interview. This charge was appropriately brought pursuant to Patrol Guide §203-08. The subject officer was placed on dismissal probation and forfeited 15 vacation days as a result.

The Commission believed that this officer should have been terminated unless exceptional circumstances to justify her retention were set forth.

(iv) Department Records

There were 17 cases in which the most serious allegation involved a false or inaccurate statement made in Department records, which included complaint reports, arrest reports, aided cards, memo books, command logs, and overtime slips. In some cases, the officer did not physically write the false statement in a Department record, but provided false information to another member of the service who included it in the record at issue. In these circumstances, the subject officer was typically charged with causing false and/or inaccurate entries to be made in Department reports. The Commission treated this type of specification as equivalent to the officer actually placing the false statement in the Department report.

Penalties for this category of false statement ranged from 5 vacation days to dismissal probation and a loss of 45 vacation days, with 10 vacation days being the most commonly imposed penalty.¹³⁶ The Commission disagreed with the penalty in one case in which the most serious false statement made was in a Department document. The officer and his partner

¹³⁶ In two cases, charges were filed in the officers' personnel folders.

responded to a fast food restaurant to remove a homeless person who was sleeping inside. During this encounter, the officer dragged the homeless person across the floor and slammed his head into the door, causing injuries. This was captured on video. When questioned regarding the cause of the injuries by the responding sergeant, the officer stated that the homeless person had become combative, a struggle had ensued, and the homeless person had fallen and hit his head on the glass door pane. When he was later interviewed by a CCRB investigator, the officer said that he had been concerned for his safety and maintained that the injuries to the homeless man were caused accidentally when he tackled the man to the ground. He denied making the statements reported by the sergeant. He repeated this second version of events to IAB investigators in a later official Department interview. Although this second version of events was contradicted by the video, he was not charged with making false or misleading statements in either the CCRB or IAB interviews, but pled guilty to wrongfully making inaccurate or misleading statements to the sergeant as to the circumstances of an arrest, thereby causing inaccurate entries in a Department record. The penalty imposed was the forfeiture of 12 vacation days.

This penalty, even in combination with the nine-day penalty imposed for the wrongful force case prosecuted by APU, was not adequate. The subject officer should have received charges for making false statements to CCRB and IAB. Those charges, along with the false statements to the sergeant, should have been brought pursuant to Patrol Guide §203-08 with the presumptive penalty of termination, as his statements presented a false scenario designed to hide the unnecessary and excessive use of force. If there were exceptional circumstances to justify his retention, these should have been set forth.

(v) Other

The Commission reviewed ten cases in the category of “other false statements.” These included false statements made to IAB’s Command Center, the Department’s Absence Control Unit, Assistant District Attorneys, and Department supervisors. Penalties ranged from 20 vacation days to termination, with a loss of 20 to 40 vacation and/or suspension days being the most common.¹³⁷ The Commission agreed with all the penalties in this category.

16. Property

The Commission reviewed three cases in the property category. These involved failing to properly handle a civilian’s property, failing to safeguard Department property, and damaging Department property. The subject officers in all three cases forfeited ten vacation days. The Commission agreed with all of the penalties in this category.

17. Tow/Body Shop

The Commission developed this category based on past years in which there were several cases involving the failure to follow Department tow procedures. These cases usually carried the implication that the officers were steering business to particular tow companies, but the officers were usually not charged with this misconduct due to evidentiary challenges. There were no cases in this reporting period with a tow/body shop allegation as the most serious allegation.

18. Unlawful Conduct

The Commission reviewed 30 cases in which the most serious allegation involved a range of violations, misdemeanors, and felonies that were not otherwise included in one of the other

¹³⁷ In three of these cases, charges were filed.

categories.¹³⁸ Penalties ranged from five vacation days to termination, with termination being the most common penalty. Unlawful conduct involving theft was the most likely to result in separation from the Department. The Commission agreed with all but one of the penalties in this category of cases.

The case with which the Commission disagreed with the penalty involved a police officer whose wife had been involved in a motor vehicle accident with the complainant and had left the scene without stopping. The complainant followed the subject officer's wife, who called her husband to her location. He responded and approached the complainant's vehicle with his firearm at his side.¹³⁹ Upon his approach, the complainant attempted to call 9-1-1, but the subject officer slapped her cell phone out of her hands, preventing the call. The subject officer was arrested for Criminal Mischief and Harassment, and was suspended for 30 days. He later pled guilty to Disorderly Conduct. Administratively, he pled guilty to Conduct Prejudicial for failing to identify himself as a police officer while taking police action and slapping the cell phone from the complainant's hands while she was calling 9-1-1. He also pled guilty to failing to notify the Department about his involvement in an unusual police occurrence. The penalty imposed was forfeiture of the 30 days he had been suspended following his arrest. The Commission believed that given the officer's actions, a period of monitoring was in order and dismissal probation should have been a part of the penalty.

¹³⁸ An assault, even one resulting in an arrest, would be included in the Domestic Incident category if the assault was between family members or people involved in an intimate relationship. A driving under the influence case would be included in the DWI/Unfit for Duty category. A criminal mischief case for threatening someone by displaying a firearm would be included in the Firearms category.

¹³⁹ The Department determined that the officer's display of his firearm was justified based on the information that his wife had provided to him.

D. Conclusion

During the period covered by this Report, the Commission analyzed 930 disciplinary cases involving 854 members of the service. As in the *Eighteenth Annual Report*, the case category with the largest percentage of disciplinary cases continued to be the FADO category with 206 cases (24.12%). This was followed by the Performance of Duty category, which had 133 cases (16%). Again, the Perjury/False Statement category had the third largest number of cases with 104 (12%). Only 1.2% of the members of the service who had cases in the disciplinary system during this reporting period held a rank of captain or above.

In reviewing DAO cases, the Commission found that, on average, slightly over one year elapsed between the date of the charges and the date of the final adjudication of those charges. When measuring the DAO cases from the date of the misconduct to the date of the final adjudication, between 19 and 21 months elapsed. This was a decrease from the more than two-year average length of time between misconduct and final adjudication that the Commission reported in its *Eighteenth Annual Report*.¹⁴⁰ This represents an improvement in moving these cases through the disciplinary process to their final conclusions.

The percentage of guilty findings to at least one allegation increased during the reporting period to 82%, up from 78%.¹⁴¹ Of the 699 officers who were found guilty of some type of misconduct, 70 (10%) were separated from the Department, either through termination by operation of law, negotiated retirement, or outright termination. Another 190 members of the service (27%) were placed on dismissal probation as part of their penalty. The two largest categories of cases that resulted in members of the service receiving dismissal probation as part

¹⁴⁰ *Eighteenth Annual Report* at pp. 45-46 and p. 160.

¹⁴¹ *Nolo Contendere* pleas were included in these statistics.

of their penalties were the Perjury/False statement and DWI/Unfit for Duty cases.

The Commission evaluated the penalties imposed in all of the cases that were adjudicated between October 2016 and September 2017, a total of 432 cases, to determine if they were sufficient to deter future, similar misconduct by the subject officer and by other members of the service. The categories where the Commission had the largest percentage of disagreements were Domestic Incidents (41%), FADO (33%),¹⁴² and Perjury/False Statement (26%). Most of the Commission's disagreements with the penalties imposed in Domestic Incident cases reflected the Department's failure to implement the Commission's recommendation from its *Sixteenth Annual Report* that members of the service who engage in physical altercations in a domestic context be placed on dismissal probation for a first offense and terminated if found guilty of a subsequent domestic physical altercation.¹⁴³ The largest subcategory of FADO cases prosecuted by DAO where the Commission did not agree with the penalties were those involving the excessive use of force. In the Perjury/False Statement category of cases, the Commission disagreed with the largest percentage of cases in the sworn document subcategory. These cases also did not have charges brought pursuant to the Department's false statement policy.

Conversely, the Commission agreed with all of the penalties imposed in those cases in the Criminal Association, Insubordination, Minor Rules Violation, Narcotics, and Property categories, a record comparable with the Commission's *Eighteenth Annual Report*.¹⁴⁴ Of those cases with which the Commission believed greater penalties were warranted, it believed that 31 officers should have been placed on dismissal probation and 11 should have been terminated.

¹⁴² This percentage does not take into account those cases prosecuted by APU.

¹⁴³ *Sixteenth Annual Report* at p. 53. As noted in the Overview, the Department has undertaken to adopt the recommendations of the Commission and the Independent Panel in this area. *Supra* at p. 5.

¹⁴⁴ *Eighteenth Annual Report* at pp. 64 and 161.

The majority of officers whom the Commission believed should have been terminated had cases in the Perjury/False Statement category.

FOLLOW-UP ON THE COMMISSION'S PRIOR RECOMMENDATIONS

A. IAB INVESTIGATIONS

In the *Eighteenth Annual Report*, the Commission made several recommendations pertaining to IAB. These recommendations involved interviews, video evidence, missing property investigations, timely identification of subject officers, and supervisory reviews of investigations. The Commission makes the following observations about IAB's implementation of some of those recommendations, noting that the *Eighteenth Annual Report* may have been published after the commencement of most of the 133 investigations reviewed for this Report.

1. Interviews

Prior Recommendation: IAB should provide in-service interview techniques training relating to interviews of civilians and members of the service. Currently, interview techniques are covered during IAB's Internal Investigations Course.¹⁴⁵ A workshop tailored to refining interview skills would build on the initial training and improve the quality of IAB interviews.

❖ Implementation and Further Recommendations: *The Deputy Commissioner of Internal Affairs has indicated that he is implementing interview training for IAB investigators. As of the close of this reporting period, training has not been bureau-wide. The Commission recommends that training continue. In addition, as indicated above, the Commission recommends that less experienced and/or less skilled interviewers be partnered with more experienced or more skilled interviewers, to ensure that all appropriate questions are posed, and that non-responsive, vague, or incomplete answers are fully pursued.*

Prior Recommendation: IAB investigators should consider taking a recess prior to concluding an official Department interview to assess whether all avenues of inquiry have been addressed. This step may alleviate the need to conduct a second official Department interview

¹⁴⁵ The Internal Investigations Course is the IAB training provided to incoming IAB investigators. See *Sixteenth Annual Report* at pp. 27-28 for a further description of this course.

with the same member of the service.

❖ Implementation and Further Recommendations: *Based on our review, it appears this recommendation was implemented in only a small number of official Department interviews. There is no cost but potentially great benefit to setting aside time before an official interview is concluded for a discussion and assessment of whether all relevant avenues of inquiry have been fully addressed, and whether all non-responsive, vague, or incomplete answers have been fully pursued. Not only might such a procedure alleviate the need for a second interview – thus shortening the time ultimately needed to complete the investigation – but it might bring to light at the earliest possible time ambiguities that, if not clarified promptly, would make successful prosecution of disciplinary cases more difficult. We note in this regard that it is not uncommon for officers seeking to avoid answering difficult questions to claim they cannot recall the specifics of incidents about which they are questioned, and that claimed failures of recall can be difficult to prove false. To the extent the elapsed time between the incident in question and a thorough official interview can be minimized by pursuing all avenues of inquiry in a single session rather than multiple sessions, (as investigative strategy permits) the plausibility of a claimed failure of recall can also be minimized.*

Prior Recommendation: IAB supervisors should require the recording of every interaction with witnesses, whether civilians or members of the service. Recordings should begin prior to contact, when feasible, and continue until the contact ends, so that the entire interaction is captured. If an interview, or any part thereof, is not recorded, the investigator should document the circumstances that prevented the recording and identify in the interview summary those statements made during the interview that were not captured on the recording.

❖ Implementation and Further Recommendations: *While IAB endeavors to record every interview, investigators still do not record every contact with witnesses. IAB has stated that it does not require, as a matter of policy, that attempts to schedule future interviews be recorded. The Commission believes that these attempts should be recorded in case the witness provides substantive information about the allegations or makes new allegations. IAB has instructed its investigators to turn on recording devices in the event that the witness begins to discuss substantive matters, however, during this transition, information can be lost and requesting the interviewee to wait while the investigator switches to a recorded line may disrupt the spontaneity of what is being said, and may cause the witness to hesitate or edit information upon learning that the conversation is being recorded. Recording these contacts would not entail a significant inconvenience.*

Prior Recommendation: When recording an interview, investigators should identify any documents or other evidence shown to the witness, particularly photograph arrays or anything used to identify subject officers. These identifications should contain enough details so that at a future time, the investigator can confidently identify the evidence if the case proceeds to a trial.

❖ Implementation and Further Recommendations: *While the Commission did not formally assess whether this recommendation was implemented, failure to identify evidence for the record was not an issue in most of the cases the Commission reviewed. There is room for improvement, however. In two cases, the actual showing of photo arrays was not recorded. In addition, in one interview, a civilian demonstrated how he was searched, but his movements were not described by investigators for the record. IAB should continue to emphasize in its training the need to make a complete record of all information provided during an interview, in whatever form it is provided.*

Prior Recommendation: Supervisors should listen to interview recordings to ensure that worksheet summaries are accurate and contain all information that is material to the investigation.

❖ Implementation and Further Recommendations: *While team leaders indicated on some worksheets that they had listened to the recordings of interviews, as a whole the Commission found more inaccurate summaries than in prior years.¹⁴⁶ More attention should, therefore, be paid to supervisory review of the worksheets for completeness and accuracy.*

2. Video Evidence

Prior Recommendation: Investigators should search for video evidence during the call-out phase of the investigation, with relevant follow-up conducted as soon as possible after the case is assigned to an investigator. Due to the potential importance of video evidence, the Commission recommends that IAB team leaders and/or commanding officers verify that searches for video evidence have been completed within the first 14 days of the investigation.

❖ Implementation and Further Recommendations: *Based on our review, this recommendation has not been implemented. The number of failures to conduct timely searches for video was small, but represented an increase over the number of instances noted in last year's review. Video is becoming more and more prevalent and often constitutes crucial evidence; closer attention should therefore be paid to assuring its prompt collection and review.*

¹⁴⁶ See the CCPC Satisfaction Rate Year-Over-Year table on p. 26, *supra*.

3. Supervisory Reviews

Prior Recommendation: The Commission reiterates the recommendation made in its *Seventeenth Annual Report*, that IAB institute a command level case review of most cases that are open longer than six months, so that commanding officers can offer directions to investigators regarding necessary investigative steps while the investigation is still viable.¹⁴⁷

❖ Implementation and Further Recommendations: *The Commission continues to find that some longer-term investigations are not being closely followed by commanding officers or criminal prosecutors. Accordingly, we reiterate our recommendation to ensure that cases open more than six months do not languish.*

B. THE DISCIPLINARY SYSTEM

1. Domestic Incident Cases

Prior Recommendation: The Commission continued its recommendation that as a general rule, a member of the service who engages in physical acts of domestic violence be placed on dismissal probation for a first offense in addition to being suspended or forfeiting vacation days. Consideration should be given to evidentiary issues, the severity of the force employed during the physical altercation, and the nature of the exact circumstances of the altercation.

❖ Implementation and Further Recommendations: *The Commission observed a greater percentage of officers who engaged in a physical altercation in a domestic context placed on dismissal probation, yet this form of discipline was still not generally applied. In January 2019, the Independent Panel appointed by the Police Commissioner to evaluate the Department's disciplinary system recommended that the Commission's recommendations for penalties in these cases be adopted.¹⁴⁸ As a result, the Department has revamped its policies regarding discipline in the domestic incident category of cases. The Commission will follow developments in this area.*

¹⁴⁷ *Seventeenth Annual Report* at pp. 34-35.

¹⁴⁸ *The Report of the Independent Panel on the Disciplinary System of the New York City Police Department* (January 25, 2019) at p. 55.

Prior Recommendation: When accepting a negotiated settlement in cases involving a physical altercation, the subject officer should be required to state verbally the exact acts to which he or she is admitting and for which the subject officer is accepting discipline.

❖ Implementation and Further Recommendations: *The Department has not implemented this recommendation. Negotiated penalties in cases prosecuted by DAO are currently resolved outside of the Department's Trial Rooms, and the resulting record is often unclear as to what specific acts the officer has admitted. The Commission reiterates this recommendation so that, among other things: 1) the record will be clear as to precisely what conduct was admitted; 2) the penalty imposed can be tailored to the specific conduct rather than just the general specification, which may encompass a wide variety of misconduct; 3) meaningful review can be made as to whether the penalty imposed was appropriate to the specific misconduct; 4) any future misconduct by the same officer can be properly considered in light of past misconduct; and 5) the precedential value of the penalty can be more accurately assessed in relation to penalties to be imposed in future cases charged under the same provision, given that the facts at issue in future cases can be viewed as either more analogous or less analogous to the facts admitted in the current case.*

Prior Recommendation: A member of the service who has either previously been disciplined as the result of a prior administrative proceeding for a domestic incident involving the use of physical force or who has been found guilty in a criminal proceeding for an act constituting domestic violence should be terminated, unless exceptional circumstances exist that justify allowing the subject officer to retain his or her position.

❖ Implementation and Further Recommendations: *This recommendation has not been implemented. However, given that changes have been recommended by the Panel's report¹⁴⁹ and that the Department has revamped its policies regarding discipline in the domestic incident area, the Commission will follow developments in this area.*

2. Performance of Duty Cases (Formerly "Duty Failure Cases")

Prior Recommendations: The Commission made three recommendations regarding these types of cases. The Commission approved of a standard 15-day penalty for single instances of an officer failing to perform his or her job responsibilities. However, the Commission

¹⁴⁹ *Id.*

recommended that dismissal probation be part of the penalty when the subject officer failed adequately to perform his job responsibilities in multiple instances or when the outcome of the subject officer's omissions resulted in serious negative consequences. In addition, the Commission recommended greater penalties when supervisors were either 1) derelict in their supervisory obligations, resulting in their subordinates failing to adequately discharge their own duties; or 2) engaging in the same misconduct as their subordinates. The Commission believed that supervisors should be penalized more severely than their subordinates for the same transgressions.

❖ Implementation and Further Recommendations: *Based on our review, it appears that none of these recommendations have been adopted. We therefore reiterate our earlier recommendations.*

3. Officers on Dismissal Probation

Prior Recommendation: The Commission made two recommendations involving officers who were on dismissal probation. For an officer who was currently on dismissal probation, the Commission recommended that the officer be terminated if he or she engaged in further similar misconduct. For dissimilar, minor misconduct, the Commission recommended that the penalty include another period of dismissal probation. For an officer who had completed a past term of dismissal probation, the Commission recommended that any subsequent misconduct also be penalized with a period of dismissal probation. These penalties would allow the Department summarily to terminate an officer who would or could not adhere to Department rules.

❖ Implementation and Further Recommendations: *These recommendations do not appear to have been implemented, although summary terminations are handled through the Risk Management Division of the Department and not DAO. Because the Commission does not receive the records of those members of the service on probation who are summarily terminated without charges being brought, we are not in a position to definitively say whether this recommendation has been implemented.*

4. Perjury and False Statement Cases

The Commission made five recommendations regarding disciplining officers who make false statements. Those recommendations, taken together, advocated that the Department aggressively investigate possible false statements and follow the false statement policy, set forth in Patrol Guide §203-08.

Prior Recommendations: The Commission recommended that Department investigators and DAO not simply accept officers' explanations of mistake or confusion when determining the officers' intent. Instead, the Commission urged the Department to examine all of the circumstances surrounding the false statement.

The Commission advised the Department to charge officers pursuant to Patrol Guide §203-08 and not another section in all instances in which there was evidence to sustain this charge. The Commission explained that the Department should not bring alternate charges in order to avoid the presumption of termination or the necessity of making an “exceptional circumstances” finding.

The Commission also recommended that the presumption of termination found in Patrol Guide §203-08 for intentional and material false official statements be generally followed. In those instances when the Department decided against termination, the Commission strongly suggested that the Police Commissioner specifically set forth the “exceptional circumstances” required by that Patrol Guide section to depart from that presumption. The Commission also suggested that in most of the cases where termination was not the outcome, that a period of dismissal probation be included in the penalty.

The Commission urged the Department to terminate officers who refused to answer questions or follow-up questions during official Department or CCRB interviews, particularly

after the officer was supplied with evidence that tended to negate his or her version of events.

In order to prevent members of the service from making false statements, the Commission recommended that routine training be implemented to stress the importance of being truthful and accurate in a variety of situations.

❖ Implementation and Further Recommendations: *None of these recommendations have been implemented. However, in its report on the disciplinary system, the Panel also recommended that the Department strengthen enforcement of its false statement policy. This panel specifically agreed with all of these recommendations.¹⁵⁰ The Department is in the process of revising its false statement policy in response to the Panel's report. The Commission has been consulted regarding the language and contents of this policy and has offered recommendations, which we expect the Department to seriously consider.*

5. Firearms Cases

Prior Recommendation: The Commission continued to recommend that dismissal probation be a part of the penalty for those officers who, while off-duty, unjustifiably display their firearms.

❖ Implementation and Further Recommendations: *The Department did not appear to have implemented this recommendation. As discussed above, there were three cases involving the off-duty display of a firearm, and two of those subject officers only forfeited vacation days for their penalty.¹⁵¹ The third subject officer resigned prior to a final adjudication of his charges. The Commission reiterates this recommendation.*

6. Harassment/Improper Contact (Formerly Other On-Duty Misconduct Cases)

Prior Recommendations: The Commission made two recommendations regarding this type of misconduct. For harassing or improper contact with other members of the service (usually those who are subordinate to the subject officer, but not necessarily so) the Commission stated that the appropriate penalty was either termination or a period of dismissal probation depending on the severity and reoccurring nature of the offensive behavior. For officers who

¹⁵⁰ *Id.* at pp. 53-54.

¹⁵¹ *See supra* at pp. 83-84 for a brief description of one of these cases.

either engaged in or attempted to engage in intimate relationships with civilians they encountered during the course of performing their job duties, the Commission recommended that the Department set forth guidance that would put members of the service on notice that these types of overtures and relationships were prohibited. The Commission also suggested that the Department specify those types of contacts and relationships that would be permissible.

❖ Implementation and Further Recommendations: *For the period between October 2016 and September 2017, there were seven cases that fit into this category. The Commission disagreed with the penalties in three of these cases. Two of these officers were terminated and one was placed on dismissal probation. The Commission has learned that the Department is seeking to draft a policy regarding fraternization between members of the service. The Department has invited the Commission to comment on this policy. The Commission continues to recommend that specific guidance be provided with respect to officers engaging in relationships with civilians with whom they have interacted in the performance of their duties.*¹⁵²

7. Overall

Prior Recommendation: The Commission recommended that in all disciplinary cases, if a recommendation for termination by a Trial Commissioner was rejected by the Police Commissioner and the subject officer was permitted to remain employed with the Department, the Police Commissioner specifically set forth his reasons for rejecting the recommendation and not merely rely on a generic “totality of the circumstances” explanation.

❖ Implementation and Further Recommendations: *There were no cases adjudicated between October 2016 and September 2017 in which the Police Commissioner overturned a recommendation or agreement of termination. However, the Independent Panel appointed by the Police Commissioner recommended that whenever the Police Commissioner imposes a penalty that is different than the penalty recommended by a Trial Commissioner, DAO, or CCRB, he prepare a separate memorandum that sets forth his specific reasons for this departure and any material including precedents relied upon and informal and external inputs into his decision.*¹⁵³ *The Commission agrees with this recommendation. The Department has announced*

¹⁵² If the civilian is convicted of a crime or likely to be engaging in criminal activity, the member of the service would be prohibited from engaging in a relationship with that person based on the Department’s prohibition against criminal association. Patrol Guide §203-10(2) (c).

¹⁵³ *The Report of the Independent Panel on the Disciplinary System of the New York City Police Department* (January 25, 2019) at pp. 48-50.

*that beginning in March 2019, enhanced variance memoranda have been prepared for any imposed discipline that is different from that recommended by either CCRB, DAO, or a Trial Commissioner.*¹⁵⁴

¹⁵⁴ <https://www1.nyc.gov/site/nypd/news/pr0401/nypd-60-day-on-disciplinary-system-reforms#/0> (accessed May 9, 2019)

NEW RECOMMENDATIONS

While the Commission continues to adhere to the prior recommendations, its work in this Report led to the following new recommendations:

A. IAB INVESTIGATIONS

The Department should explore creating a separate disposition category for those cases in which IAB (or any other investigative unit) believes that there is sufficient evidence to bring a charge but no charge is brought and no discipline is administered such as “Referred but not charged” or “Unsubstantiated due to declination by DAO.” This disposition could be used when DAO declines to pursue discipline because it disagrees with the investigators’ assessment that sufficient evidence exists. Such a category would alert future investigators who review the officer’s background that although the disposition was ultimately not substantiated, investigators believed there was merit to the allegation. This information might prompt investigators probing later allegations against the same officer to take the later allegations more seriously. It might also cause them to re-examine the earlier allegations in greater depth when reviewing the background of the subject officer as the earlier allegations would have more credence than they ordinarily would be given to prior allegations closed as “Unsubstantiated.”

If an investigator interviews witnesses together, uses a witness as an interpreter, asks closed-ended questions instead of eliciting a narrative from the witness, or provides the witness with a summary of what occurred and seeks the witness’ acquiescence to the accuracy of that summary instead of asking the witness to explain what occurred, the investigator should describe in his or her interview worksheet the reasons for conducting the interview in that manner.

B. THE DISCIPLINARY SYSTEM

In this Report, the Commission set forth factors it views as aggravating factors that warrant greater penalties in various types of cases. Of course, in all cases, a prior disciplinary history should result in an enhanced penalty for the subject officer. The Commission is aware efforts are underway to create disciplinary matrices. Without proposing any particular matrix, the Commission sets forth below factors that it believes should be considered in developing these penalties, many of which the Department already considers when fashioning its penalties.

1. DWI/Unfit for Duty

In determining the appropriate penalty, the Department should deviate up or down from the standard penalty depending on the following:

- Whether the subject officer caused an accident, and if injuries were sustained by another person as a result;
- If there was an accident, whether the officer remained at the scene to await police response or to exchange pedigree/insurance information, or whether he or she left the scene of the accident or the scene of an unusual police occurrence without making required notifications to the Department;
- Whether the officer refused to take a breathalyzer or similar test;
- Whether the officer was armed;
- Whether the officer was on or off duty at the time of the offense;
- Prior instances of similar conduct.

2. FADO-Excessive Force

In determining the appropriate penalty, the following factors should be considered:

- The nature and severity of the force used;
- Whether a firearm was involved;
- The nature of any injuries sustained by the person upon whom force was used;
- Whether the person upon whom force was used was handcuffed or otherwise restrained;
- Whether the subject officer had a prior history involving the wrongful use of force.

3. Firearms-Unjustified/Accidental Discharge

- Termination, absent articulated extraordinary circumstances, is the appropriate penalty when the subject officer fails to promptly report the discharge to the Department as required.

4. Firearms-Failure to Safeguard

- There should be enhanced penalties when the subject officer permits an untrained civilian to handle his or her firearm, especially if the firearm is loaded;
- There should be enhanced penalties if the subject officer leaves his firearm unsecured, particularly if vulnerable civilians such as children have ready access to the firearm;
- There should be enhanced penalties if the firearm is not recovered;
- There should be enhanced penalties if the subject officer intentionally delays in reporting that the firearm is missing.

5. Harassment/Improper Contact between Members of the Service

The following factors should result in increased penalties:

- The subject officer is a supervisor of the complainant;
- There are multiple instances of harassing behavior;
- It is evident that the complainant was not receptive to or was offended by the harassing behavior or improper contact.

6. Harassment/Improper Contact Between a Member of the Service and a Civilian

The Commission views termination as the presumptively appropriate penalty when:

- The civilian was arrested by the subject officer and the criminal matter is pending;
- The civilian is a minor and the subject officer engages in a sexual relationship with the minor or attempts to do so.

In all other circumstances, the Commission recommends that, at minimum, dismissal probation be included in the penalty when:

- The subject officer engages in multiple instances of unwanted or harassing contact;
- The subject officer accesses Department databases or other resources to perform favors for the civilian.

7. Miscellaneous—Off-Duty versus On-Duty Law Enforcement Disputes

- The Commission recommends that the Department examine the penalties imposed in this subcategory of cases to determine if they are adequate to encourage compliance with instructions of on-duty members of law enforcement.

8. Performance of Duty-Failure to Investigate

- Dismissal probation should be included in the penalty if the subject officer's dereliction of duty results in severe harm, or is one of a series of failures of the subject officer to perform his job responsibilities in a satisfactory manner.

9. Performance of Duty-Crime Misclassification

Penalties should be increased if:

- The subject officer has completed multiple reports in which the complaint has been inappropriately downgraded or;
- The subject officer is a supervisor or;
- The subject officer directed a more junior member of the service to complete the report in a manner that would downgrade the complaint.

10. Perjury/False Statements

As noted in the prior section,¹⁵⁵ in response to the independent Panel's report on the disciplinary system, the Department is in the process of revising its false statement policy, and the Commission is offering recommendations designed to ensure that those members of the service who make false official statements are terminated in the majority of cases. Prior to the announcement of these revisions, the Commission was in the process of preparing its own report regarding the Department's discipline in false statement cases. Due to the expected revision of the policy in the near future and the possibility that the Commission's comments would be rendered moot by the revisions, the Commission is pausing its work on that report pending publication of the revised policy.

¹⁵⁵ See *supra* at p. 124.

The Commission notes, however, that as part of its work on that report, discussions were held with Department personnel responsible for interpreting and implementing the current false statement policy. With respect to the provision of that policy that imposes a penalty of termination absent “exceptional circumstances,” the Commission was advised for the first time that the Department does not construe the phrase “exceptional circumstances” narrowly to mean either “rare” or “extraordinary,” which is how the Commission has always construed that phrase. Instead, the Department apparently interprets the phrase “exceptional circumstances” broadly to encompass any number of factors that might, individually or collectively, be viewed as sufficient to justify an exception to the presumption of termination. As explained to the Commission during these discussions, every false statement case is unique, and therefore the penalty to be imposed is determined by examining all of the facts and circumstances of each individual case.

The Commission strongly disagrees with this interpretation of the phrase “exceptional circumstances,” and disagrees with this approach to punishing officers who have intentionally lied. First, this interpretation conflicts with the plain meaning of the word “exceptional.” Second, this interpretation is so broad that it permits a finding of “exceptional circumstances” in virtually every case, and thus invites the exception to swallow the commendable general rule that termination is the appropriate penalty when a member of the service has intentionally lied. The Commission has now recommended to the Department, and will continue to recommend, that only in rare circumstances should an exception be made to the presumptive penalty of termination in false statement cases. We recommend that such an exception be made only when the mitigating circumstances relate to the lie itself, and not to such unrelated matters as an officer’s years with the Department or record of arrests.

Finally, as we have frequently recommended in the past, we continue to recommend that when such rare circumstances are found by the Police Commissioner to justify a penalty other than termination, those circumstances be specified, so there can be meaningful review of whether the policy is being properly applied, or is instead being circumvented.

OPEN DATA COLLABORATION

In 2017, CCPC joined the Open Data initiative, which provides free access to public data published by New York City agencies and other partners. To learn more about Open Data and utilize their website, please visit <https://opendata.cityofnewyork.us/>.

To date, CCPC published datasets from its *Seventeenth* and *Eighteenth Annual Reports* on the Open Data portal. CCPC is committed to publishing additional datasets with the release of future Annual Reports.

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COMMISSIONER BIOGRAPHIES

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Michael F. Armstrong

Chair

At the time of his death on October 17, 2019, Michael F. Armstrong was Of Counsel at McLaughlin & Stern LLP, where he focused on complex civil litigation, white-collar criminal and regulatory matters, and internal corporate investigations. From 1962 to 1967, Mr. Armstrong served as an Assistant United States Attorney in the Southern District of New York where he was Chief of the Securities Fraud Unit. From 1970 to 1972, he was Chief Counsel to the “Knapp Commission,” which investigated allegations of police corruption in the New York City Police Department. His work on the Commission was memorialized in his 2012 book, “They Wished They Were Honest.” In 1973 he served as interim District Attorney for Queens County, New York. Mr. Armstrong also wrote the introduction to the report produced by the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department, chaired by Judge Milton Mollen. He also served as Counsel to the New York Urban League and Advisor to New York Attorney General Andrew Cuomo regarding the investigation of allegations of political influence in the State Police. Mr. Armstrong earned his LLB from Harvard Law School and his BA from Yale University.

Kathy Hirata Chin

Kathy Hirata Chin is a Partner at Crowell & Moring LLP, where she is a member of the healthcare and litigation groups. Ms. Chin graduated from Princeton University magna cum laude and Columbia Law School, where she was Editor-in-Chief of the Journal of Transnational Law. She served as Commissioner on the New York City Planning Commission from 1995 to 2001 and has served as a Commissioner on the New York City Commission to Combat Police Corruption since August 2003. She has served on the Federal Magistrate Judge Merit Selection Panel for the Eastern District of New York, Governor Mario Cuomo's Judicial Screening Committee for the First Department, the Gender Bias Committee of the Second Circuit Task Force, former Chief Judge Judith Kaye's Commission to Promote Public Confidence in Judicial Elections, the Board of Directors of the New York County Lawyers Association, and the Board of Directors of New York Lawyers for the Public Interest, a non-profit that advocates for marginalized New Yorkers. She currently serves on the Attorney Emeritus Advisory Council and the Commercial Division Advisory Council, appointed to both by former Chief Judge Jonathan Lippman of the New York State Court of Appeals, and as Vice Chair on the Board of Directors of the Medicare Rights Center, a national nonprofit organization dedicated to helping older adults and people with disabilities get affordable health care. In April 2016, she was appointed by Governor Andrew Cuomo to the First Department Judicial Screening Committee.

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Deborah E. Landis

Deborah E. Landis is a consultant who provides investigative assistance and litigation support to other attorneys. She focuses primarily on white-collar criminal and regulatory matters. Ms. Landis served as an Assistant United States Attorney for the Southern District of New York for more than twenty years, investigating and prosecuting cases involving police corruption, perjury, narcotics trafficking, racketeering, money-laundering, tax fraud, and other fraud on the government. As Chief of the General Crimes Unit and as Senior Litigation Counsel, she also had responsibility for supervising and teaching other prosecutors. During 2000, Ms. Landis served the Department of Justice (DOJ) in Washington, D.C., acting as an Associate Deputy Attorney General and as DOJ's Special Counsel for Health Care Fraud. Ms. Landis received many awards for her work as a prosecutor, including the Henry L. Stimson Medal for Outstanding Contributions to the Office of the United States Attorney, which was awarded by the Association of the Bar of the City of New York (1999), and the Attorney General's John Marshall Award for Trial of Litigation (2000). Ms. Landis also taught Trial Advocacy at the Harvard Law School for many years. Ms. Landis earned her JD from the University of Wisconsin Law School.

James D. Zirin

James D. Zirin has been a trial lawyer for over 40 years, handling a wide variety of white-collar criminal and complex commercial litigation. Mr. Zirin is a former Assistant United States Attorney for the Southern District of New York. He is also a fellow of the American College of Trial Lawyers, a past trustee of New York Law School, a past member of the advisory board of the Woodrow Wilson School of Public and International Affairs at Princeton University, a former director and member of the executive committee of the Legal Aid Society, a member of the Council on Foreign Relations, and a past vice president and trustee of the Federal Bar Council. Mr. Zirin is the host of the critically acclaimed cable TV talk show "Conversations with Jim Zirin" and author of three best-selling books: "The Mother Court--Tales of Cases That Mattered in America's Greatest Trial Court", "Supremely Partisan -- How Raw Politics Tips the Scales in the United States Supreme Court," and his current book "Plaintiff in Chief—A Portrait of Donald Trump in 3500 Lawsuits."

COMMISSION STAFF

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APPENDIX A

EXECUTIVE ORDER

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